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No. 0215 27 APR 9 - 2003

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IN THE

Supreme Court of The United States

THE UNITED STATES OF AMERICA
EX RELATIONE
CHRISTOPHER A. ROGALSKI

VERSUS

HENRY P. JANSEN, et al

On Petition for A Writ of Certiorari
To the United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

Christopher A. Rogalski

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I. QUESTIONS PRESENTED FOR REVIEW

1. May the District Court use the qui tam statute's requirement that the trial Judge approve service of the qui tam complaint upon the defendants to shift the burden of proof for proving affirmative defenses to the Relator, while at the same time refusing to grant the Relator notice and an opportunity to be heard on the defenses raised sua sponte by the trial judge, before dismissing the Relator's personal claims against the named defendants?

2. Should the trial judge be recused due to bias where he has dismissed a complaint sua sponte, without an opportunity to be heard, based upon a waiveable affirmative defense, refused to even consider a motion to reconsider that ruling (claiming the issue is now moot because it was appealed), and refused to address a motion to recuse the U.S. Attorney with a clear conflict of interest from acting in a sealed complaint?

3. Does a cause of action for violation of civil rights under 42 U.S.C. 1983, or a state law claim for malicious prosecution, accrue prior to the time that the underlying criminal sentence is overturned such that a case or controversy arises under Article III of the U. S. Constitution?

4. Does the filing of an action for injunctionary relief to enjoin a bad faith prosecution toll any applicable statute of limitations, or otherwise give constructive notice of, claims for violation of civil rights, conspiracy to deprive civil rights, malicious prosecution, abuse of process, and other tort claims arising from the malicious prosecution and abuse of process?

5. When a corrupt county political machine commences a second criminal prosecution for the same offense, affecting double jeopardy of a criminal defendant,

does a cause of action for violation of civil rights under 42 U.S.C. 1983, or a state law claim for malicious prosecution, accrue prior to the time that the second prosecution ceases such that a case or controversy arises under Article III of the U. S. Constitution?

6. When a complaint plainly alleges that a conspiracy to deprive civil rights existed prior to the arrest preceding a malicious prosecution, does a cause of action for conspiracy to deprive civil rights under 42 U.S. C. 1985 accrue prior to the time that the conspiracy ceases, or if it does accrue, is the statute of limitations tolled while the conspiracy continues?

7. When no civil action is filed or served upon a criminal defendant, is the "judgment" resulting from a bill of attainder from the legislature, which is also an ex post facto law, a criminal judgment of the court in which it is recorded, when it refers to a criminal docket number in that court and not a civil action?

8. Are statutory rights, such as the right to file an appeal, civil rights under 42 U.S.C. sections 1983 and 1985?

9. Should this court grant certiorari to review an appeal which a Circuit Court of Appeals has refused to adjudicate for over twelve (12) years due to abstention?

II. PARTIES

THE UNITED STATES DEPARTMENT OF EDUCATION

Ex Relatione

CHRISTOPHER A. ROGALSKI,

Petitioners

Versus

HENRY P. JANSEN, Respondent.

RADNOR TOWNSHIP, Respondent.

ROY K LINDGREN, Respondent.

PATRICIA LINDGREN, Respondent.

LAURIE ANN LINDGREN, Respondent.

F. HARRY SPIESS, Respondent.

DAVID MAGEE, Respondent.

WILLIAM H. RYAN, Respondent.

HEATHER MATTES, Respondent.

JANE DOE, Respondents

PARTIES AT INTEREST

THE PENNSYLVANIA STATE UNIVERSITY, A.K.A. PENN STATE, AND HEREINAFTER REFERRED TO AS PSU, Respondent.[1]

BRYCE JORDAN, (former) PSU President, Respondent.

DONALD T. SUIT, PSU Director Of Student Conduct Standards, Respondent.

DAVID STORMER, defacto PSU Chief Of Police, Respondent.

WAYNE WEAVER, PSU Security Guard, Respondent.

JAMES ROBINSON, PSU Security Guard, Respondent.

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[1] Contrary to what the name implies, Penn State is not a state agency, but a land grant university of which the Commonwealth of Pennsylvania controls a minority of the board of Trustees. See 24 Pa Purdon section 2535 *et. Seq.*

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In The

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EX RELATIONE
CHRISTOPHER A. ROGALSKI

vs.

HENRY P. JANSEN, et al.,
Respondents

On Petition for A Writ of Certiorari
To the United States Court of Appeals for the Third Circuit

Relator, Christopher A. Rogalski, on his own behalf, petitions for a Writ of *Certiorari* to The United States Court of Appeals for the Third Circuit's December 6, 2002 Judgment. [A-70] Since his appeal to the Third Circuit also requested that the Third Circuit cease abstention, and finally decide the appeal of a judgment of January 31, 1990 [A-72] from the United States District Court for the Middle District of Pennsylvania, on appeal and unadjudicated in the Third Circuit, request is also made for a writ of *certiorari* to order the Third Circuit, to rule on that appeal promptly, or in the alternative, request is made for review in this Court of the January 31, 1990 District Court Judgment in this Court, prior to adjudication in the Third Circuit, through a writ of *certiorari*.

V. STATEMENT OF JURISDICTION

Jurisdiction exists under 28 U.S.C. 2101(c) and 1254(1) to review the Third Circuit's judgment of December 6, 2002 [A-70] and its denial of a timely filed motion for rehearing on January 10, 2003.

The Third Circuit's Opinion of December 6, 2002 [A-1] also declined to finally adjudicate a judgment it has abstained from deciding, without explanation, due to an ongoing state court criminal prosecution involving the same or overlapping allegations of fact by some mutation of the abstention doctrine, *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976). Since that appeal of the U.S District Court for the Middle District of Pennsylvania's judgment of January 31, 1990 [A-72] remains unadjudicated in the Third Circuit, docket No. 90-5752, (only one of two judgments appealed simultaneously was adjudicated [A-9]), jurisdiction exists for this Court to review that appeal presently under 28 U.S.C. 1254(1) and 2101(e) prior to adjudication by the Third Circuit, or after such time as the Third Circuit finally decides to collectively execute its office under 2101(c). The Court also has potential jurisdiction over the matter pending in the Delaware County Court of Common Pleas under 28 U.S.C. 1254(1).

The notifications required by Rule 29.4 (b) and (c) have been served upon the Solicitor General of the United States, and the Pennsylvania Attorney General.

VI. CONSTITUTIONAL PROVISIONS AND STATUTES

Provided in appendix

VII. STATEMENT OF THE CASE

INTRODUCTION

This case is at the convergence of 1) Unreasonable delay on appeal flowing from failure of the district court to enter a judgment, *Bankers Trust Co. v. Mallis*, 435 U.S. 381 (1978), 2) An intervening bad faith criminal prosecution, without a right to a jury trial and also Double Jeopardy, to further obstruct the right of appeal, 3) The abstention doctrine, *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976), or some mutation of it, resulting in the refusal of the Third Circuit to fully adjudicate an appeal and, 4) The requirement that a state criminal conviction be overturned before a cause of action accrues for violation of civil rights claims, *Heck v. Humphrey*, 512 U.S. 477, (1994). In fact, this is the case that the four concurring Justices in *Heck* described, one in which review by *habeas corpus* is not possible because the plaintiff is not presently incarcerated. This case also involves the *qui tam* statute and the "harassment" witch-hunts, attacking First Amendment freedoms.

The United States Dept. of Education, *ex relatione* Christopher A. Rogalski, a United States government grantee, filed a *qui tam* action on July 24, 2001 [A-90] against the named Respondents to recover damages, now over $84,021 resulting from an illegal and fraudulent claim of "emotional distress" against the Relator. [A-52] That false claim was "piggy-backed" on a bad faith criminal prosecution, without a right to a jury trial, as an administrative order for "restitution". [A-105-109] In addition to the *qui tam* claims brought on behalf of the U.S. Dept. of Education, the Relator, not being incarcerated, also sought declaratory and injunctive relief to enjoin the ongoing bad faith, Double Jeopardy, prosecution and expunge the wrongful conviction [A-121-124] such that a cause of action would accrue to brings suit for violations of his Civil Rights, conspiracy to deprive Civil Rights, and other claims pursuant to *Heck supra*.

A Proceedings Prior To The *Qui Tam* Action

The Relator brought a Civil Rights action, *Rogalski v. PSU, et al*, for damages after being falsely arrested for placing a poster on campus under 42 U S.C. 1983 against PSU in 1988, after the refusal of the PSU to inform a female student that trespassing into the private quarters of a men's dormitory would not be tolerated.

On May 10, 1989 Judge Muir issued an egregiously erroneous opinion and order granting PSU's motion for summary

judgment, but failed to require the clerk to enter the judgment pursuant to F.R.C.P. 58. [A-34, A-50] Despite the fact that this order was appealable under *Mallis, supra*, wheels spun for no practical purpose as the Third Circuit, on October 18, 1989, dismissed a valid appeal as prematurely filed [A-14] The actual judgment for the May 10, 1989 Order was not entered until January 31, 1990. [A-18]

To further obstruct appellate review, and without subject matter jurisdiction, Judge Muir caused a judgment to be entered by the clerk against Relator on November 21, 1989 for counsel fees under 42 U.S.C. 1988, prior to the entry of judgment in the predicate case. [A-20, A-30] Two attempts were made to obtain a writ of *prohibition* from the Third Circuit to prevent Judge Muir from illegally holding these hearings under 42 U.S.C. 1988. The first attempt was made by a petition filed in the Third Circuit on September 7, 1989. This petition became moot and was not docketed after Judge Muir became strangely and unexpectedly ill that same day, and cancelled the scheduled hearings *sine die*. The Third Circuit denied the second attempt at prohibition on October 26, 1989 [A-13]. Following the refusal of Judge Muir to grant a "Motion for Reconsideration" to dismiss the November 21, 1989 judgment due to a lack of subject matter jurisdiction [A-18], that judgment was also appealed to the Third Circuit concurrently with the judgment entering summary judgment on February 23, 1990 [A-133].

Judge Muir refused to consider or permit discovery of any evidence of an on going dispute between PSU et al., and the Relator.[1] [A-22] Despite the fact that Judge Muir ruled that there was no possible ongoing controversy, on December 11, 1989, Relator, Christopher A. Rogalski was arrested and charged with harassment, by one Officer Jansen. [A-96-101] Jansen's affidavit was the second time in less than two years and eight months that Laurie Ann Lindgren chose to wait until the Relator was preparing for final examinations to cajole a law enforcement official to molest him for "harassment", without signing a sworn statement affirming the

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[1] PSU continued to claim Lindgren was a "victim of harassment" despite uncontradicted affidavits filed to compel a subpoena of her phone records. PSU failed to contradict that Lindgren had called the Relator long distance after the events at issue. Instead they nonsensically argued that she would continue to be "harassed" if the subpoena was compelled and she was required to answer for her actions. District Judge Muir's first action in the case was to quash the subpoena. In a similar later situation, not a single U.S. Senator would object to the relevance of Anita Hill's phone records at Justice Thomas's confirmation hearings.

truth of her statements. [A-99] This arrest occurred while attempting to perfect the appeal of the November 21, 1989 judgment, and after filing to compel entry of judgment of the May 10, 1989 Order and Opinion granting summary judgment such that appeal of that judgment would now be heard. [A-116] Jansen's affidavit alleged, "Laurie Lindgren lives in constant fear, depriving her of a normal existence as a case in point - not being able to attend the Homecoming event at Penn State University." [A-97]

Jansen's affidavit would cite Judge Muir's Opinions as evidence the Relator had violated certain state statutes. and Lindgren was a victim of "harassment". [A-97] The warrant executed by Respondent Jansen contained a word for word repetition of contentions Judge Muir falsely attributed to the Relator in his libelous May 10, 1989 Opinion, only Jansen now alleged these statements were made by Respondent Laurie Ann Lindgren, notwithstanding the fact that these statements contradicted her sworn testimony in her federal deposition. [A-98] Jansen also alleged that Lindgren was "harassed" by being subpoenaed to testify at that deposition.[2] [A-98] Jansen also called Relator on the telephone angrily stating, "don't you dare file that appeal."[A-100]

In an attempt to stop the bad faith prosecution, Relator filed an action to enjoin it in District Court on August 29, 1990, pursuant to 42 U.S.C. §1983.[3] Following the denial of a temporary restraining order, and emergency interlocutory appeal of that denial was filed in the Third Circuit on September 6, 1990.[4] [A-125] The District Court later invoked

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[2] When asked at deposition shy she felt compelled to visit PSU security guards, Lindgren's testimony is nonsensical, "Because Chris would not stop leaving me alone and anything I would do he would ignore" and that she "needed some attention." She testified that she was "chuckling" about the poster she complained of and admitted to trespassing in the private quarters of Relator's dormitory to leave a note that he was a "joke." This is a far cry from the statutory requirement of being "alarmed or seriously annoyed" to conduct a criminal investigation. This whole matter disappears if Laurie Lindgren, who graduated with a degree in communications, is required to put her "complaint" in writing, which she had no intention of doing then or ever. The obvious reason being the "harassment" allegation was obviously not true. Instead of addressing her sworn testimony, we played the telephone game in the courts below, and the tale kept growing taller on down the line.

[3] That action also stated an intention to bring claims for monetary damages at a latter dare.

[4] The appeal was not docketed as it became moot when the trail was delayed.

Younger v. Harris, 401 U.S. 37 (1971) abstained from enjoining the action, and dismissed the complaint. Relator also petitioned the Third Circuit for a writ of *mandamus* to strike the libelous, *ipsa dixit*, statements which Judge Muir falsely attributed to Relator's testimony and contradicted his testimony. Third Circuit denied *mandamus* on December 20, 1990 [A-12], rehearing *en banc* denied on January 24, 1991. [A-68]

As a result of being advised of the state court prosecution, with two judgments on appeal before the Third Circuit, on December 26, 1990, that court choose to affirm the one judgment which it lacked a grant of subject matter jurisdiction from the United States Congress to hear or decide [A-9], while abstaining, without comment, from addressing the judgment it was required to review. The Third Circuit denied rehearing *en banc* on February 26, 1991 [A-67]. To date the Third Circuit offers no explaination why it has not adjudicated the judgment of January 31, 1990[5].

B. The *Qui Tam* Action and Relator's personal claims

This action was brought in the District Court for the Eastern District of Pennsylvania, pursuant to 31 U.S.C. §3729 and §3730; 18 U.S.C. §1001; 42 U.S.C. §1983 and §1985; 28 U.S.C. §2201 and §2202; 28 U.S.C. Title 20, Chapter 28, generally, and 20 U.S.C. §1011a and §1087gg, specifically; The First, Third, Fourth, Fifth, Ninth, and Fourteenth Amendments to the United States Constitution. Jurisdiction in the District Court is founded upon 28 U.S.C. §1343, §1345, and the aforementioned statutory and Constitutional provisions.

Corrupt Delaware County District Attorney, William H. Ryan, Jr., best known for refusing to prosecute millionaire murder John DuPont for assault with a deadly weapon thus emboldening him to commit the act, molested the Relator for 15 months with unnecessary Court appearances for two misdemeanor offenses he never had any intention of prosecuting. [A-104] Ryan would later drop both misdemeanor

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[5]In its latest opinion, The Third Circuit did not address this issue directly, stating only, "We have considered each of Rogalski's remaining arguments on appeal ... and we find those arguments wholly without merit and in need of no discussion." It is unclear whether the Third Circuit is simply stating that it will not cease abstention or suggesting that no other appeal is pending. What is "wholly without merit" is a group of elitist snobs who cannot count to two and adjudicated only one of two judgments appealed. In layman's terms this is known as "laying down on the job", and the sovereign is out over $84,000 as a result.

offenses, over objection, forcing a plea of *nolo contendere* to preserve the right to trial by jury both to the Relator and the U.S. Dept. of Education. [A-105] The trial judge then sentenced the Relator to 90 days probation as well as an illegal administrative order to pay Lindgren $2,668 in "restitution" for an unsubstantiated claim of "emotional distress" despite the fact that she never claimed to have suffered any physical injury and could not produce a receipt or cancelled check for any of her claims. [A-52] At no point was the Relator given a chance to confront Lindgren about her alleged "emotional distress", and the trial judge refused to schedule a hearing for post-verdict motions, actually stating that "there is no post-verdict rights [sic]" in order to obstruct any possible appeal in Pennsylvania state courts. [A-58]

The restitution issue should have become moot after the Relator successfully completed his statutory maximum sentence of 90 days probation, and the court lost jurisdiction. The corrupt political machine never sought a contempt order against the Relator, but instead attempted to compel payment of the fictional restitution through "probation revocation". A bench warrant issued for his arrest for failing to attend a "*Gagnon* II hearing" to revoke his "probation" over a year after his probationary period had been served, and in spite of the fact that the Relator had neither been arrested nor provided a *Gagnon* I hearing[6]. [A-61] This bench warrant, continuing the bad faith prosecution, placed the Relator in Double Jeopardy, and obstructed his efforts to challenge the illegal conviction. The corrupt Delaware County political machine, to date, has made no attempt to serve the bench warrant, but the ongoing prosecution in the state court resulted in the abstention of the Third Circuit from adjudicating his appeal. *Infra.*

Despite issuing a warrant to obtain jurisdiction over the Relator's person, sometime in 1995 the corrupt political machine entered a "judgment" against the Relator for the fraudulent "restitution". [A-6] The Relator had been neither arrested for the warrant, nor served with civil process at the time the "judgment" was entered. Nor did the Relator own property, live, or work in Delaware County. In fact, the "judgment" was entered pursuant to an *ex post facto* law and bill of attainder statute, 42 Pa. (Purdon) 9728, passed in 1990,

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[6] Assuming for the sake of argument that it was not Double Jeopardy to revoke probation over a year after it expired, failure to pay costs or make restitution cannot form the basis for probation revocation. *Bearden v. Georgia*, 461 U.S. 660, (1983).

well after the last alleged incident in 1989 for which he was charged. At no point in time during his 90 day probationary period did the corrupt political machine attempt to enter a judgment based on the *ex post facto* law. Instead they waited until 4 years later, when that *ex post facto* statute was amended in 1995 [A-87 additions in bold] to declare that orders for restitution were now to enter be entered as "judgments", to do just that. No attempt was ever made to execute the judgment.

In addition to the *qui tam* claims brought on behalf of the U.S. Dept. of Education, the Relator, not being incarcerated, also sought declaratory and injunctive relief to enjoin the ongoing bad faith, Double Jeopardy prosecution and expunge the wrongful conviction [A-121-124] such that a cause of action would accrue to brings suit for violations of his Civil Rights, conspiracy to deprive Civil Rights, and other claims pursuant to *Heck , supra,* The Relator also filed his own claims against the respondents, but did not request to serve them with process, nor had planned to serve process, prior to obtaining declaratory and injunctionary relief. In fact, the Relator deferred requesting such relief until after the U.S. government had investigated the claim as required by law and the claim was unsealed. For this act of deference, the Relator was punished by the District Court.

At the time of filing the action in District Court, Patrick Meehan was the Delaware County District Attorney whom this action sought to enjoin, a witness to the factual matters stated in the complaint, and a possible defendant for civil damages or costs. Subsequently, Patrick Meehan assumed the office of U.S. Attorney for the Eastern District of Pennsylvania. After investigating himself, on October 3, 2001, Meehan, through two of his subordinates, filed "The Government's Notice of Election to Decline Intervention and Suggestion of Dismissal of Counts One and Two". Meehan's participation in a matter, filed under seal none-the-less, as a United States Attorney was clearly unethical, improper and prejudicial to the rights of the United States.

On October 21, 2001, the Relator filed a "Motion to Recuse Patrick Meehan" due to his past as the Delaware County District Attorney prior to being named the U.S. Attorney for the Eastern District of Pennsylvania, his obvious conflict of interest in this matter, and his status as a witness. Judge Buckwalter refused to address the unethical behavior of Patrick Meehan. On December 7, 2001, Judge Buckwalter marked Pearl Harbor Day with a sneak attack bombing Due Process of Law in a *sua sponte* issued "Memoran-

dum/Order" [A-15] dismissing both the *qui tam* complaint, and the all of the Relator's personel claims as "time-barred", to avoid addressing Meehan's glaring ethical lapse. Judge Buckwalter's decision is contrary to this Court's decision in *Heck, supra,* that a cause of action has yet to accrue, and contrary to F.R.C.P. Rule 8(c) requiring that affirmative defenses such as "time barred" defenses must be proved by the moving party, and other laws and precedents. *Infra.*

Judge Buckwalter gave the Relator no notice or opportunity to be heard on the affirmative defenses arrogantly raised and decided *sua sponte,* thus punishing him for asserting a *qui tam* claim. The December 7, 2001 order further went on to dismiss the complaint "with prejudice", [A-16] when if it was to dismiss at all rather than abstain, it was required to do so without prejudice under the abstention doctrine and *Younger, supra.* Judge Buckwalter found no facts and cited no legal authority whatsoever for any of his actions or his naked, blanket assertion that the action was "time barred". [A-15-16]

On December 20, 2001, the Relator filed a timely motion for reconsideration of the December 7, 2001 "Memorandum/Order" in the District Court, as well as a notice of appeal. The District Court denied reconsideration on Jan. 14, 2001, [A-17] stating that reconsideration was "moot" because the Relator filed the appeal concurrently with the motion for reconsideration.

On December 6, 2002, the Third Circuit affirmed the District Court. [A-1] In its Opinion, the Third Circuit made factual findings not appearing in the record below, claimed that a "judgment" filed in a criminal case as a result of an *ex post facto* law and bill of attainder is a "civil judgment", claimed that the Relator bore the burden of proving the negative in disproving affirmative defenses, refused to acknowledge that the complaint had requested a declaratory judgment nullifying and expunging a criminal judgment, while claiming that malicious prosecution and violations of civil rights claims accrue prior to the time that a conspiracy to deprive civil rights ceases and prior to the time that a criminal sentence is reversed. The Third Circuit also refused to address the District Court's refusal to address the motion for reconsideration, which Judge Buckwalter declared was "moot" because the pending appeal in the Third Circuit. The Third Circuit, in a footnote, stated it had no jurisdiction to review the refusal to decide the reconsideration motion, notwithstanding the fact that the District Court had not modified the original order appealed nor adjudicated the

merits of the motion. [A-3] On January 10, 2003 the Third Circuit denied rehearing.

Underlying everything else stated, the purpose of the bad faith criminal prosecution in the Banana Republic of Delaware County, as stated in the original complaint itself and the brief on appeal, was to retaliate against the Relator, and obstruct justice in an appeal in the Third Circuit. That appeal is a case study of the unreasonable delay that flows on appeal from a failure of the District Court clerk to enter a judgment of an otherwise final order which this Court decried in *Mallis, supra*, "nothing but delay would flow... Wheels would spin for no practical purpose" *Mallis, supra* 435 U.S. 381 at 386. And nothing but delay has flown ever since...

VIII. ARGUMENT

A. THE FALSE CLAIMS ACT DOES NOT SHIFT AFFIRMATIVE DEFENSES, NOR DOES IT ABOLISH DUE PROCESS OF LAW

The Third Circuit's opinion approved the District Judge's knee-jerk, *sua sponte* dismissal of the complaint as "time barred" with prejudice, prior to permitting a response from the Relator. The panel was unable to cite any supporting cases from other FCA actions, and instead cites *Ping v. Ryan*, 49 F.3d 51 and likens a *qui tam* plaintiff to an incarcerated individual requesting approval to file frivolous civil rights claims *en forma pauperis* pursuant to 28 U.S.C. §1915. [A-6] While this analogy very clearly shows the bias and outright hostility towards a *pro se* Relator and civil rights plaintiff, the panel compares two very different and clearly distinguishable actions. An indigent prisoner proceeding *en forma pauperis* uses the courts at taxpayer expense for his own benefit or amusement. The *qui tam* Relator pays for an action to recover damages for the benefit the government out of his own pocket. The court is required to review only the actions brought on behalf of the government under 31 U.S.C. §3730(b)(2) prior to service. Nothing in the FCA was intended by Congress to prejudice the rights of the Relator to pursue his own claims. In fact, the FCA prohibits retaliation against a Relator. (See 31 U.S.C. §3730(h)) The United States has recovered over $3.5 billion under the FCA's *qui*

tam provisions alone from 1986 to 2000[7]. The panel's opinion will discourage potential litigants from bringing FCA claims on behalf of the government for fear that personal claims will be dismissed with prejudice, based upon affirmative defenses, before they can be heard to respond. The result is very clearly not what Congress intended when it enacted this statute.

The District Court offered no explanation as to how the civil rights conspiracy action was time barred. The panel's opinion approving this *sua sponte* dismissal of a complaint requires that a plaintiff plead the non-existence of a waivable affirmative offense. Requiring a plaintiff to affirmatively prove in the complaint that defendants cannot assert an affirmative offense is contrary to *Leatherman v. Tarrant County Narcotics Unit*, 507 U.S. 163 (1993). (Claims of immunity from suit need not be affirmatively pleaded in complaint.) Due Process of Law requires that a party have notice and an opportunity to be heard before a deprivation of life, liberty or property by adjudication. *Goss v. Lopez*, 419 U.S. 565 (1975). Dismissing the complaint *sua sponte* with prejudice, without permitting the plaintiff the right to respond, or notice and an opportunity to be heard, violates Due Process of law as guaranteed by the Fifth Amendment. Furthermore, the panel's opinion on appeal purported to shift the burden of proof to the plaintiff to prove the negative, and violates F.R.C.P. 8(c). The panel's opinion held that the Relator bore the burden of proving that each and every cause of action was not time barred. This is clearly erroneous and is not the Relator's burden. The Relator cannot rebut that which was not proved.

B. RECUSAL OF JUDGE BUCKWALTER IS REQUIRED.

The defense that an action is "time-barred" is an affirmative defense, and one that can be waived. F.R.Civ.P. 8(c), *Moore v. Tangipahoa Parish Sch. Bd.* 594 F.2d 489 (5th Cir. 1979). The fact that the Judge dismissed the complaint *sua sponte* and without an opportunity to be heard on the issue, violates the undersigned's rights to Due Process of law guaranteed by the Fifth Amendment. *Goss v. Lopez*, 419 U.S. 565 (1975)[8]. Furthermore, the District Judge failed to sup-

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[7] *6th Annual Northeast Regional Employment Law Institute, Vol II*, Kreidler, *et al.*, 2000, at pg. TT-4.

[8] Nothing prevented Judge Buckwalter from issuing a "Rule to Show Cause", such that the Relator could be heard on the issue.

port his naked assertion that the action was "time-barred" by citing any facts or legal authority. The Relator is now required to "reinvent the wheel" on appeal. Judge Buckwalter has also permitted a witness in a sealed complaint to represent himself and claim to speak for the United States as the U.S. Attorney. Judge Buckwalter, in fact, dismissed the complaint in order to avoid addressing the glaring ethical lapse and conflict of interest of Patrick Meehan [A-15], violates Due Process of Law, guaranteed by the Fifth Amendment. *Goss v. Lopez, supra.*

28 U.S.C. 455(a) requires that a judge "shall recuse himself in any proceeding where his impartiality might reasonably be questioned." Likewise, 28 U.S.C. 455(b)(1) requires that a judge must disqualify himself, "Where he has a personal bias or prejudice concerning a party..." By permitting the above, Judge Buckwalter has demonstrated a clear bias and prejudice against the Relator His mind is so very clearly closed that he refused to even allow the Relator to be heard in the District Court, prejudicial to the rights of the Relator and the United States. Judge Buckwalter has demonstrated a clear bias and must be recused on remand in accordance with 28 U.S.C. 455(b)(1). It is not acceptable to have such an obviously biased judge decide any further issue in this matter.[9]

C. *Heck v. Humphrey*: A CIVIL RIGHTS CAUSE OF ACTION HAS YET TO ACCRUE ON A CONTINUING MALICIOUS PROSECUTION.

This Court in *Heck , supra,* made very clear that the statute of limitation for a malicious prosecution §1983 action has yet to accrue in this matter:

> We hold that, in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a §1983

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[9]The motion to recuse Judge Buckwalter was raised, along with other issues, in the Relator's "Motion for Reconsideration" which he refused to rule upon, claiming the issue was "moot". Since the denial of the motion did not change or modify the original order, no amended repeal was required. (See the advisory committee's explanatory notes to Fed. R. App. P. 4(a)(2).) Alternatively, because the trail court did not issue an adjudication on the merits of the issue, an appellate court has potential jurisdiction under the All Writs Act, 28 U.S.C. §1651, to compel compliance.

> plaintiff must prove that the conviction or sentence has been reversed...

Heck, supra 512 U.S. at 486-487. Since the underlying prosecution has yet to be invalidated, the Relator's cause of action has plainly yet to accrue for malicious prosecution[10]. Therefore, a cause of action for malicious prosecution cannot be "dismissed with prejudice" as "time barred". Because of the lower courts' actions in declaring an action "time-barred" before it accrued, the Relator now faces the possibility of invalidating the state conviction, and then facing *res judicata* defenses to a civil rights claim due to the Third Circuits recent opinion.

Heck, addressed the issue of a prisoner's 1983 action for money damages. by Justice Souter's concurring opinion, in which 3 other Justices joined, made a point to affirm the history of the Civil Rights Act of 1871 and that the majority opinion did not prejudice the rights of those unable to invoke review under the *habeas corpus* statute:

> Harmonizing § 1983 and the habeas statute by requiring a state prisoner seeking damages for unconstitutional conviction to establish the previous invalidation of his conviction does not run afoul of what we have called, repeatedly, "[t]he very purpose of "§ 1983: "to interpose the federal courts between the States and the people's federal rights." *Mitchum v. Foster*, 407 U.S. 225, 242 ...
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> It would be an entirely different matter, however, to shut off federal courts altogether to claims that fall within the plain language of § 1983. "[I]rrespective of the common law support" for a general rule disfavoring collateral attacks, the Court lacks the authority to do any such thing absent unambiguous congressional direction where, as here, reading § 1983 to exclude claims from federal court would run counter to "§ 1983's history" and defeat the statute's "purpose". *Wyatt v. Cole*, 504 U.S., at 158.

Heck, supra 512 U.S. at 501. The instant case is the type of case that Justice Souter's opinion referred. The Relator is not presently incarcerated, so *habeas* review is not now pos-

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[10] It is still possible for the underlying sentence to be invalidated. Under state law challenges to an illegal sentences which go the courts jurisdiction to act are not waivable and may be raised at any time. *Com. v. Reed*, 374 Pa. Super. 510 (1988) The Relator also has a right not to face Double Jeopardy in the state court when he raises those issues. *Infra.*

sible. Review in the state courts is apparently presently precluded because the trial court unlawfully refused to hold post verdict hearings required for an appeal in the state court and later declared the Relator a "fugitive from justice". The existence of a live bench warrant for his arrest by the state court makes clear that a criminal prosecution is still pending, and in fact is the commencement of a second prosecution prohibited by the Double Jeopardy clause of the Constituion. *Infra.*

The Third Circuit's opinion refuses to acknowledge that the complaint seeks reversal and expungement of the underlying conviction [A-121-124], and only refers to the illegal bench warrant. The panel's opinion holds that because the 1992 bench warrant may have been actionable itself under 42 U.S.C. §1983, that the plaintiff's right to challenge the underlying conviction from 1991, and all that flowed from it is now "time barred" and dismissed with prejudice, for failing to file suit within two years of the issuance of 1992 bench warrant, notwithstanding the fact that invalidating the 1992 bench warrant would not invalidate the 1991 criminal conviction as required by *Heck, supra.* The illegal issuance of the bench warrant for a non-existent "probation revocation" clearly obstructed the plaintiff from invalidating the 1991 sentence and judgment in a state court and was part of the conspiracy, but it didn't invalidate the underlying conviction that the Relator challenged in his complaint.

The state law borrowing provisions of 42 U.S.C. 1988 only apply to the extent that they are consistent with the Constitution and laws of the United States. It is inconsistent with the "high purposes" of § 1983 "that a single inflexible analogy should govern", *Wilson v. Garcia,* 471 U.S. 261 at 283 (O'Connor, dissenting 1985), the statute of limitation in actions which are far different from a garden-variety personal injury action. Appling the state personal injury statute of limitation to the instant action is inconsistent with federal civil rights law in that it permits civil rights claims to become time barred while the deprivation of civil rights continues. Thus, those who set out to deprive civil rights under color of state law will be emboldened to continue the most outrageous and shameless conduct, and otherwise pile on those whose rights they deprive, with the expectation that if they do so long enough they will outlast the modest statute of limitation for personal injury. This result is clearly at odds with the scope and purpose of the civil rights act.

Noteworthy in *Heck* is the failure of any Justice to mention that a litigant's rights could be prejudiced, "time-

barred", or dismissed "with prejudice" for failing to enjoin an ongoing, bad faith, criminal prosecution. Justice Souter's concurring opinion further stated:

> The favorable termination requirement avoids the knotty statute-of-limitations problem that arises if federal courts dismiss § 1983 suits filed before [a plaintiff] pursues federal habeas, and (because the statute-of-limitations clock does not start to ticking until [a plaintiff's] conviction is set aside) it does so without requiring the federal courts to stay...

Heck, supra 512 U.S. at 499. The favorable termination requirement also protects the victim against being forced to litigate claims while being prosecuted, incarcerated, or otherwise disadvantaged due to the denial of his God given civil rights, while a corrupt political machine lies in wait to resume a bad faith, Double Jeopardy, criminal prosecution. If a claim is not is not cognizable under §1983 until after the conviction or sentence is reversed or declared invalid, how can the District Court dismiss all claims "with prejudice" if they are not yet ripe for disposition? The Third Circuit pettifogged this issue, misrepresenting that the complaint only sought damages for an illegal bench warrant and refused to admit that the complaint sought to reverse the judgment that warrant was founded upon. Also, how can violations of the RICO statutes, or 42 U.S.C. § 1985 be "time-barred" if the conspiracy is still ongoing and a U.S. District Court has now twice abstained from enjoining that prosecution?

D. NOTICE TO DEFEND WAS GIVEN IN PREVIOUS EQUITABLE ACTION, AND THE DISTRICT COURT ABSTENTIANED.

On August 29, 1990 *Rogalski v. Ryan* docket #90-5632 was filed against former Delaware County District Attorney William H. Ryan in the U.S. District Court for the Eastern District of Pennsylvania court requesting declaratory and injunctive relief and the costs of the proceedings to enjoin the same bad faith state court prosecution at issue in this action. While in the course of attempting to enjoin the bad-faith prosecution, notice was given that the complaint would be amended, "Additionally monetary damages will also be demanded in an amended complaint for obstruction of justice, abuse of process, harassment, and false light disclosure of private facts." (Plaintiff's "Memorandum of Law in Opposition To Respondents' Motion to Dismiss Petition For Injunction") Before the complaint could be amended to add

additional parties and a request for monetary damages, on January 30, 1991 Judge James Kelly ruled, citing *Ross v. Meagan*, 638 F.2d 646 at 650 (3rd Cir. 1981), that the complaint contained "conclusory allegations" and was not pleaded with sufficient detail.[11] Relying upon the abstention doctrine and *Younger v. Harris*, 401 U.S. 37 (1971), Judge Kelly refused to permit the complaint to be amended to comply with *Ross, supra*, and dismissed the complaint without prejudice on January 30, 1991, rather than stay the proceedings.

In this case, notice was given promptly that those responsible for the malicious prosecution would be held accountable.[12] As a result of being so notified, the Respondents in the instant case have refused to stop the prosecution to the present day, as evidenced by an illegal conviction, illegal sentence of "restitution" for non-existent mental anguish which is not supported by law, a refusal to hold a hearing on post-verdict motions such that an appeal could be perfected, an illegal bench warrant, and a criminal judgment for restitution, despite the fact that any lawful jurisdiction they may have had has long since expired. Statutes of limitations, "represent a pervasive legislative judgment that it is unjust to fail to put the adversary on notice to defend within a specified period of time..." *United States. v. Kubrick*, 444 U.S. 111 at 117 (1979). In this case, effective notice to defend against the claims now pending was served long ago, and the respondents are estopped from claiming otherwise. The panel's opinion holds that if a conspiracy to deprive civil rights continues long enough, the conspirators can run out the clock on the statute of limitations and avoid accountability. *Infra.*

E. A CAUSE OF ACTION UNDER 42 U.S.C. §1983 FOR DOUBLE JEOPARDY DOES NOT ACCRUE UNTIL THE SECOND PROSECUTION ENDS.

On March 15, 1991, Relator, after forced to plead *nolo contendere* to preserve his rights on the civil side of the court,

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[11] The U. S. Supreme Court would later unanimously strike down these types of heightened pleading requirements in Civil Rights lawsuits in *Leatherman v. Tarrant County Narcotics Unit*, 507 U.S. 163 (1993).

[12] At one point in the illegal criminal prosecution of the Relator, Judge Prescott announced from the bench that she had recused herself because she was named as a Respondent for equitable and injunctive relief in federal court.

was convicted[13] of a summary offense sentenced to the statutory maximum 90 day probationary period. 18 Pa. (Purdon) 1105 At the end of this 90 day probationary period, the jurisdiction of the corrupt trail court expired. "The trial court has no authority to hold Appellant in contempt following the maximum possible term of imprisonment. Likewise, the trial court has no authority to compel restitution payments continuing beyond the [maximum possible term of imprisonment]. *Com. v. Luper*, 745 A.2d 1248 at 1249 (Pa. Super. 2000) Undeterred, the corrupt Delaware County political machine set out to compel payment of the illegal restitution through a "probation revocation hearing" over a year after the probation had expired. An alleged "probation officer", McGee appeared in court on August 17, 1992 and requested a bench warrant be issued for Relator for failing to attend a "Gagnon II" hearing [A-61], notwithstanding the fact that the Relator had not been arrested, nor received a Gagnon I hearing. Even if a Gagnon II hearing could have been held, failure to pay costs or restitution is not grounds to revoke probation. *Bearden v. Georgia*, 461 U.S. 660, (1983).

Since the maximum period of probation or incarceration had expired, the warrant issued is clearly a second prosecution for the same offense, and placed the Relator in Double Jeopardy: "[W]hen the Government has already imposed a criminal penalty and seeks to impose additional punishment in a second proceeding, the Double Jeopardy Clause protects against the possibility that the Government is seeking the second punishment because it is dissatisfied with the sanction obtained in the first proceeding." *United States v. Halper*, 490 U.S. 435, 451 , n. 10 (1989). This Court has expounded on Double Jeopardy:

> We have recognized that the Double Jeopardy Clause consists of several protections: "It protects against a second prosecution for the same offense after acquittal. It protects against a second prosecution for the same offense after conviction. And it protects against multiple punishments for the same offense." *North Carolina v. Pearce*, 395 U.S. 711, 717 (1969) (footnotes omitted). These protections stem from the

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[13] The refusal of trail court to grant allocution, and to hold post verdict hearings, renders the judgment of that court illegal and voidable under Pennsylvania law, (See *Commonwealth v. Thomas* 553 A.2d 918 (1989) and *Commonwealth v. Bonarrigo, 448* A.2d 411(1988) respectively.) The lack of evidence on the record supporting a physical injury renders the restitution order illegal. *Com. v. Harner*, 533 Pa. 14 at 17, (1992). Under Pennsylvania law, an illegal sentence cannot be waived. *Id.*

> underlying premise that a defendant should not be twice tried or punished for the same offense. *United States v. Wilson*, 420 U.S. 332, 339 (1975). The Clause operates as a "bar against repeated attempts to convict, with consequent subjection of the defendant to embarrassment, expense, anxiety, and insecurity, and the possibility that he may be found guilty, even though innocent." *United States v. DiFrancesco*, 449 U.S. 117, 136 (1980)...Thus , our cases establish that the primary evil to be guarded against is successive prosecutions.

Schiro v. Farley, 510 U.S. 222 at 229 (1994). Furthermore, "The Double Jeopardy Clause is and has always been...the embodiment of technical prophylactic rules that require the Government to turn square corners". *Jones v. Thomas*, 491 U.S. 376 at 396 (1989, Scalia, dissenting). The Third Circuit's opinion holds that the Relator had some obligation to continue to check the dockets in Delaware County after his sentence expired. This is clear error. A criminal defendant has a constitutional right to a legitimate "expectation of finality in the original sentence." *U.S. v. DiFrancesco, supra.* The Relator should have been permitted to resume his life without further harassment after the 90 day probationary sentence was completed. By violating the Double Jeopardy clause, the Respondents are equitably estopped from raising a "time bar" defense. The Third Circuit's rhetorical statement that the Relator "knew or should have known" of the bench warrant prior to July 24, 1999 is without a factual basis in the district court, and regardless the statute of limitation would not run until the second prosecution ended. *Infra.* In fact the corrupt political machine did not attempt to execute the warrant, nor have they registered the warrant with the state police. Why should the Relator have known it existed? Because the Third Circuit was using it to abstain from adjudicating his appeal?

F. A CLAIM FOR VIOLATION OF CIVIL RIGHTS DUE TO A CONSPIRACY TO DEPRIVE CIVIL RIGHTS DOES NOT ACCRUE UNTIL THE CONSPIRACY ENDS

The panel's opinion is based upon misrepresenting the cause of action set forth in the complaint [14] as well as facts

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[14] The "facts" of the panel's opinion do not appear in the order and opinion of the District Court and were asserted in panel's opinion for the first time on appeal. It is unreasonable for the Relator to have assumed that

of record in the Court of Common Pleas of Delaware County, The U.S. District Court for the Eastern District of PA., and in this court, to which the complaint gives notice.[15] Specifically, the panel writes "the allegations in his Complaint center exclusively upon alleged unlawful actions that occurred around the time the warrant was issued on August 17, 1992." Wrong. Compliant Paragraphs 163-167 [A-115-116] clearly state a claim of conspiracy to obstruct justice and deprive civil rights that began on or before December 11, 1989. To wit:

> Beginning on or about December 11, 1989, F. Harry Spiess, Jr.[16] used his political connections with the Delaware County Republican political machine to form an enterprise which conspired to obstruct justice by falsely arresting, harassing, molesting and maliciously prosecuting Christopher A. Rogalski in order to obstruct his right to appeal Judge Muir's May 10, 1989 "Opinion and Order" and subsequent entry of judgment on January 31, 1990, and conspired to use Laurie Ann Lindgren's fraudulent "restitution" claim to extort several thousand dollars from Christopher A. Rogalski.

[A-115, ¶ 164] Since the complaint clearly states the existence of a conspiracy to deprive civil rights prior to the issuance of the arrest warrant in December 1989, the cause of action for violations of civil rights cannot accrue until the underlying prosecution ceases. *Nieves v. McSweeney*, 241 F.3d 46 (1st Cir. 2001). Instead of addressing this matter, the panel's opinion reads like the three blind men and the elephant, describing separate parts of the whole as unrelated incidents instead of the a unified, continuing conspiracy to deprive civil rights as stated in the complaint.

When the conspiracy to deprive civil rights is formed prior to an arrest, the cause of action for violation of civil

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the panel would misrepresent the complaint in this manner. The 219 paragraph, 29 page complaint speaks for its self.

[15] The notice concept of pleading a complaint for civil rights claims does not require a more stringent level of detail than any other action. *Leatherman v. Tarrant County Narcotics Unit*, 507 U.S. 163 (1993). The conduct of the panel is clearly contrary to the Supreme Court's ruling in *Leatherman* and demonstrates a bias and outright hostility toward a *pro se* Relator/civil rights Plaintiff.

[16] F. Harry Spiess, Jr. is the "fixer". He is also believed to have given tens of thousands of dollars to the many political campaigns managed by political hack Patrick Meehan, now the U.S. Attorney for the E.D. of PA. Meehan has refused to recuse himself or disclose his relationship with Spiess and the other Defendants.

rights does not accrue, or is tolled, until the plaintiff is free of the malicious prosecution. *Venegas v. Wagner*, 704 F.2d 1144 (9th Cir. 1983), *Robinson v. Maruffi*, 895 F.2d 649 (10th Cir. 1990) and *Nieves v. McSweeney*, 241 F.3d 46 (1st Cir. 2001). The Third Circuit's opinion now creates a split in the circuits for this Court to review.

G. A "JUDGMENT" FROM A BILL OF ATTAINDER IS NOT A CIVIL JUDGMENT.

Despite issuing a warrant to obtain jurisdiction over the Relator's person, sometime in 1995 the corrupt political machine entered a "judgment" against the Relator for the fraudulent "restitution". The Relator had been neither arrested for the warrant, nor served with civil process at the time the "judgment" was entered. Nor did the Relator own property, live, or work in Delaware County. In fact, the "judgment" was entered pursuant to a statute, 42 Pa. (Purdon) 9728, passed in 1990, well after the last alleged incident in 1989 for which he was charged. At no point in time during his 90 day probationary period did the corrupt political machine attempt to enter a judgment based on the *ex post facto* law. Instead they waited until 4 years later, when that *ex post facto* statute was amended in 1995, declaring that orders in criminal proceedings for restitution were now to be entered as "judgments", to do just that. Considering that rules of statutory construction require that a statute should be construed such that it is Constitutional, and the statute on its face does not purport to apply retroactively, what notice did the Relator have that a civil "judgment" was entered in a distant court when he was never sued in a civil action.?

How did that court have any jurisdiction to enter a civil judgment against the Relator's person according to the the *ex post facto* law, when by its own admission, in executing an illegal bench warrant for his arrest, it had admitted urisdiction over his person was lacking?[17] If they did not have jurisdiction over his person, how could anything be adjudicated? In fact, the "judgment" was entered as a result of a

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[17] Under Pennsylvania law, a person who is within a jurisdiction due to involvement with the legal system is immune from service of process, *Fahy v. LeBlanc*, 223 Pa. Super. 185 (1972). Nor may tricks suffice to obtain jurisdiction over a party by deception. *Hotlen v. Middour*, 404 Pa. 351 (1961).

bill of Pains and Penalties[18], a form of a bill of attainder, prohibited by the Due Process clause of the.Fourteenth Amendment. *Cummings v. State of Missouri*, 71 U.S. (4 Wall.) 277, at 323 (1867).

Also, "legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial are bills of attainder prohibited by the Constitution." *U.S. v. Lovett* 328 U.S. 303 at 315 (1943). The Relator here had no judicial trial on the issue of civil liability. "[T]he award of restitution does not affect the appellant's right to defend in a civil action." *Com. v. Genovese* 675 A.2d 331 at 334 (Pa. Super. 1996) Nor does a plea of *nolo contendere* admit any civil liability. *Hudson v. U.S.*, 272 U.S. 451 (1926) Nor was it foreseeable that four years after sentencing that the illegal and unsupported order for "restitution" would become eligible as a civil judgment by way of an *ex post facto* law. In fact, the *nolo* plea was entered for the purpose of avoiding civil liability on an issue for which a jury trial was not available, and with an obviously corrupt or biased trial judge who illegally ordered "restitution" for "emotional distress" without any evidence of physical injury[19] or damages whatsoever in the record, denied the Relator an opportunity to challenge the evidence or the award thereof, and refused to hear post verdict motions to obstruct appeal. What competent attorney would permit this judge to prejudice his/her client's civil claims?

Specifically, as applied to this case[20], through 42 Pa. (Purdon) 9728 the Pennsylvania Legislature usurps the judicial power of a jury. It attempts to convey greater jurisdiction than it can confer under the U.S. and state Constituions.[21] It directs that a judge without jury may deprive criminal defendants of the right to trial by jury for civil judgments by simply declaring the civil penalty "restitution". Under this statute, the Legislature recognizes some heretofore nonexistent pendant jurisdiction of a judge with-

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[18] "A bill of attainder is a legislative act which inflicts punishment without a judicial trial. If the punishment be less than death, the act is termed a pill of pains and penalties." *Cummings, supra.*

[19] Physical injury directly resulting from the crime is required for restitution in Pennsylvania, 18 Pa. Section 1106(a) and (h).

[20] Normal rules of construction require statutes to be construed that they are Constitutional.

[21] Right to trial by Jury in a civil suit is guaranteed by the Seventh and Fourteenth amendments to the U.S. Constitution as well as Article 1, section 6 of the Pennsylvania Constitution.

out jury in a criminal proceeding to order civil judgments without the right of trial by jury, in excess of the maximum possible fine, the amount in question to which a right to trial by jury attaches, and lasting a duration exceeding that of a judgment from a jury and the maximum criminal jurisdiction of that court. The deprivation of the right to a trial by jury in a civil case, without any showing or need for equitable relief, is in fact a punishment.

That statute also runs afoul foul of Rule 133 of the Pennsylvania Supreme Court which, by authority of Article V, section 10 (c) of the Pennsylvania Constitution, suspends statutes inconsistent with the Pa. Rules of Civil Procedure on matters of " practice, procedure and the conduct of all courts,...and all officers serving process or enforcing orders, judgments or decrees of any court" Art. V. Sec 10(c). Since the Pa. Rules of Civil Procedure contain extensive rules of procedure for obtaining, and executing upon, a civil judgment, which are contrary to 42 Pa. (Purdon) 9728, that statute is superceded and suspended by the Pa. Rules of Civil Procedure. Why should the Relator be burdened with a "judgment" for "restitution" filed after the trial courts lawful criminal jurisdiction had expired, when he was not served with civil process, nor permitted discovery, nor any ability to question the "restitution" order? Surely Due Process of Law required that some notice be given of this criminal "judgment" could metamorphis into a civil judgment.

H. FEDERAL STATUTORY RIGHTS ARE PROTECTED RIGHTS UNDER 42 U.S.C. §1983 AND §1985

The panel's refusal to recognize that federal statutory rights are in fact rights protected by 42 U.S.C. §1983 or §1985 is incorrect:

> "The substantive scope of the rights which may be protected and vindicated under 42 U.S.C. §1983 against contrary state action...includes not only federal constitutional rights but also all rights secured by federal statutes unless there is a clear indication in a particular statute that its remedial provisions are exclusive or that for various other reasons a §1983 action is inconsistent with congressional intention."

Chapman v. Houston Welfare Rights Org., 441 U.S. 600 at 672 (1979) (White, Concurring). That rights granted by federal statute are in fact civil rights is so fundamental and such common sense that it has not been contested in any court. The argument that these claims are also not time barred was

in fact included in the argument stated in the Relator's brief in the lower court concerning 42 U.S.C. §1983 and §1985, and very plainly was not waived.

I. THE THIRD CIRCUIT'S ALICE IN WONDERLAND SCHOOL OF JURISPRUDENCE; *Bankers Trust Co. v. Mallis* IGNORED. NOTHING BUT DELAY FLOWS. WHEELS SPIN FOR NO PRACTICAL PURPOSE...

The recent opinion of the Third Circuit refuses to address that courts abstention from addressing an unadjudicated appeal. Since the Third Circuit had previously declined to adjudicate an otherwise final order prior to the entry of judgment in the District Court contrary to *Mallis, supra,* Judge Muir's grossly erroneous May 10, 1989 Order and Opinion granting PSU, et al., summary judgment was appealed twice and adjudicated not at all by the Third Circuit. In an attempt to obstruct appellate review, Judge Muir refused to order entry the judgment for over eight months and in the interim issued caused a judgment for counsel fees [22]pursuant to 42 U.S.C. §1988 to be entered against the Relator. In granting that motion, Muir even held that an appeal taken pursuant to *Mallis,* before the judgment was entered, was frivolous. Muir later held that an order granting summary judgment was the same as the entry of the judgment itself by the clerk contrary to the separate document doctrine, and then ordered the clerk to enter the judgment. [A-18] On appeal, the Third Circuit limited its review to the judgment for counsel fees, abuse of discretion, while abstaining from conducting a *de novo* review of the opinion granting PSU, *et al.*, summary judgment

From the first judiciary act, the United States Congress granted litigants the right to seek review of the federal trial courts by a superior court. Thus review of the common law trail courts, the Circuit Courts, was had by way of a Writ of Error in the United States Supreme Court.[23] The right of appeal, when granted by the Congress, is unequivocally a substantive right of due process guaranteed by the Constitution. Accordingly, in modern times, the Congress directs review of the federal trial courts, the U.S. District Courts, in the various Courts of Appeals:

> The courts of appeals...shall have jurisdiction of appeals from all final decisions of the district courts of

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[22] The court lacked subject matter jurisdiction to enter counsel fees pursuant to 42 U.S.C. §1988 prior to entry of summary judgment.

[23] See section 22 of the Judiciary Act of 1789.

> the United States...except where a direct review may be had in the Supreme Court.

28 U.S.C. 1291. In order for a litigant to take an appeal as of right, the judgment must be final.

Determining when a judgment is final, and thus, appealable depends on a proper entry of judgment in the District Court. F.R.C.P. 58 mandates a proper entry of judgment. Entitled "Entry of Judgment", provides in pertinent part:

> [U]pon a decision by the Court...that all relief shall be denied, the clerk, unless the court otherwise orders, shall forthwith prepare, sign and enter the judgment without awaiting any direction of the court...A judgment is effective when set forth and when entered as provided in Rule 79(a).

In understanding F.R.C.P. 58, one must not confuse the opinions and orders of the Judge with the entry of judgment by the clerk":

> Rendition of the judgment, the judicial act, is of course for the court; its filing, entry and recordation are ministerial activities to be handled by the clerk, and, normally, committing the judgment to writing is ministerial.
>
> Two requirements must be met before an adjudication becomes an effective judgment: (1) the judgment must be set forth in writing on a separate document. And (2) the judgment so set forth must be entered in the civil docket as provided by Rule 79(a)

Moore's Federal Practice ¶58.02, pg. 58-19. *C.I.T Financial Service v. Yeoman's*, 710 F.2d 416 (7th Cir. 1983). The requirement of F.R.C.P. 58 that "Every judgment shall be set forth of a separate document.", was added to avoid confusion on the running of time to appeal:

> The sole purpose of the separate-document requirement, which was added to Rule 58 in 1963, was to clarify when the time for appeal under 28 U.S.C. § 2107 begins to run...The separate-document requirement was thus intended to avoid the inequities that were inherent when a party appealed from a document or docket entry that appeared to be a final judgment of the district court only to have the appellate court announce later that an earlier document of entry had been the judgment and dismiss the appeal as untimely. The 1963 amendment to Rule 58 made clear that a party need not file a notice of appeal until a separate judgment has been filed and entered. See *United States v. Indrelunas*, 411 U.S. 216, 220-222...

Bankers Trust Co. v. Mallis, 435 U.S. 381, (1978) at 385-386. Professor Moore, whom the U.S. Supreme Court cites with approval in both *Indrelunas* and *Mallis*, concludes, "Thus the judgment must be separate from and opinion, memorandum, or order the court may issue." *Moore's Federal Practice*, ¶ 58.02.1 at pg. 58-19. In *Indrelunas, supra*, the U.S. Supreme Court commented on F.R.C.P. 58 as follows:

> That provision is, as Professor Moore states, a "mechanical change" that must be mechanically applied in order to avoid new uncertainties as to the date on which a judgment is entered.

Indrelunas, supra, at 221-222. As previously stated, at no point in the record does District Judge Muir state that judgment had been entered in the predicate case prior to ordering the clerk to enter judgment on January 31, 1990. Nor is a judgment effective until entered in the docket. *United States v. Chambers*, 429 F.2d 410 (3rd Cir. 1970); *Neely v. Merchants Trust Co*, 110 F.2d 525 (3rd Cir. 1940).

In the instant case, we see the refusal of the District Court to enter the judgment in an attempt to obstruct an appeal, all of which is in violation of F.R.C.P. 58 *supra*. Such conduct is not to be permitted according to this Court:

> Certainty as to timeliness, however, is not advanced by holding that appellate jurisdiction does not exist absent a separate judgment. If, by error, a separate judgment is not filed before a party appeals, nothing but delay would flow from requiring the court of appeals to dismiss the appeal. Upon dismissal, the district court would simply file and enter the separate judgment, from which a timely appeal would then be taken. Wheels would spin for no practical purpose.

Mallis, supra, at 386. The decision in *Mallis* comports with judicial economy.

The above mentioned scenario is identical to what occured the Third Circuit. Only, this case the Third Circuit let the wheels spin for no practical purpose, unless it was to enable District Judge Muir to hold hearings for which he had no subject matter jurisdiction. Nor are respondents saved by a possible determination that the District Court intended the May 10, 1989 Opinion to be final, and thus appealable. The actual date of the judgment is controlling. (See *United States v. Hark*, 320 U.S. 531 (1944).) District Judge Muir's conduct in stating that the time to file an appeal had expired, when in fact in had not, is similar to a case decided in the Ninth Circuit. The Ninth Circuit ruled:

> The district court's various orders did not constitute an "entry of judgment" in this case, because no separate document of judgment was entered. Although the district court's July 30 order refusing to enter judgment gave appellant notice that the district court considered his claims to be finally dismissed, the order also suggested, mistakenly, that appellant's time for appeal had already run...Our circuit has held fast to a mechanical application of the "separate judgment" rule, requiring formalities to be observed. *See Carter, supra.* Therefore, the time for appeal never began to run, and appellant's appeal is timely.

McCalden v. California Library Ass'n, 955 F.2d 1214 (9th Cir. 1992). As District Judge Muir sat in the Third Circuit, see *Gregson & Assoc. Architects v. Gov't of the Virgin Islands*, 675 F.2d 589 (3rd Cir. 1982) (Where no separate document existed, appeal taken more than 30 days after entry of memorandum opinion was timely, even though the court and both parties treated this as the final judgment.)

A judgment entered without comment is construed narrowly and no *res judicata* can be presumed to attach to claims not addressed. See *Lawlor v. National Screen Service Corp.* 349 U.S. 322, (1955). Also, the two different judgments from the District Court are subject to different standards of review. Review of a grant of counsel fees is based upon an "abuse of discretion" standard of review, *Yaron v. Township of Northampton* 963 F.3d 33 (3rd Cir. 1992), while review of the underlying judgment is a *de novo* review, *Pedigo v. P.A.M. Transport, Inc.*, 98 F.3d 396 (8th Cir. 1996). A judgment for counsel fees under 42 U.S.C. 1988 does not prejudice the right of appeal of the predicate judgment. *Globe Newspaper Co. v. Beacon Hill Architectural*, 100 F.3d 175 (1st Cir. 1996). The undersigned has a right to Due Process of Law and a "meaningful adjudication" *Boddie vs. Connecticut*, 401 U.S. 371 (1971) of **both** claims presented to this court. By affirming only one of two judgment appealed, and abstaining from the second the Third Circuit performed a partial adjudication only. An incomplete, partial adjudication is not a final judgment, nor is it a final adjudication for purposes of *res judicata, Acha v. Beame*, 570 F.2d 57 (2nd Cir. 1978).

Where two judgments were appealed from a District Court, the Ivy League educated judges of the Third Cicuit must be presumed to be capable of counting to two. Congress has granted a right to appeal **all** final judgments of the District Courts to the respective Courts of Appeals, 28 U. S.

C. 1291 and 1292. Under the enabling statutes for the Federal Rules, the Rules can not abridge or modify any substantive right, 28 U. S. C. 2072(b), clerical error notwithstanding. The right of appeal is clearly such a right. The February 23, 1990 notice of appeal appealed two judgments. Only one judgment was affirmed. One judgment on appeal to the Third Circuit remains outstanding. THE THIRD CIRCUIT WAS PAID TO UMPIRE A DOUBLE HEADER, AND THEY ONLY CALLED ONE GAME, AND THEY HAVE BEEN FAR FROM FAIR ARBITORS!

J. THE GREAT HARASSMENT WITCH-HUNT

This Civil Rights action under 42 U.S.C. 1983 was brought to address the great witch hunt of our time, the "harassment" witch hunts on a college campus. Once in an earlier era Humphrey Bogart admonished Lauren Bacall about using strong words when leaving a man's bedroom. Yet in the era of the politically correct, a female student who cannot keep away from a man's dormitory is declared a "victim" of "harassment". As time goes by, some things shouldn't change. Like most witch hunts, the term "harassment" is never defined except in the most vague and fuzzy of terms. At the mention of "harassment" all legal rights and due process disappear, as does all reason. While the great Supreme Court Justice Oliver Wendell Holmes opined that the First Amendment to the United States Constitution required that we protect the right to express the thought that we hate, in modern times the politically correct demand censorship of such thoughts.

There has been a continuing pattern to these false claims of "harassment" consisting of:

1. Taking private communications which are not only lawful, but constitutionally protected expression,
2. Declaring that they are illegal based upon the "intent" of the author,
3. Denying a right to trial by jury on the question of the "intent" of the author, as if people's private communications and personal lives where somehow analogous to disturbances of the peace, or fights in bar which are subject to the jurisdiction of a Justice of the Peace.
4. Refusing to consider any of the surrounding circumstances or similar conduct of the "victim" when determining the "intent" of the author.[24]

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[24] Civil harassment complaints require proof of unwelcome communications. See *Scusa v. Nestle U.S.A. Co.*, 181 F. 3d 958 (8th Cir. 1999) at 965.

5. Targeting and discriminating against males, particularly young males, while failing to require the female "victim" to affirm the truth of her story under oath or affirmation, or otherwise conduct herself in a respectable manner.[25]
6. Abrogating the rule of law by having different standards of conduct based upon whom one is rather than what one did or did not do[26]

The net effect of this witch-hunt is to turn a free nation into a national kindergarten where the rights to privacy, and the First Amendment rights to freedom of expression and to practice one's religion in every day life get trumped, without any showing of harm to anyone. Such hysterics, masquerading as law, is nothing more than declaring an open season on the young American male. It also costs the Treasury money. As a result of this nonsense, the Relator was blackballed from the practice of law and defaulted on his student loans. The U.S. Department of Education now claims over $84,021 as a result of that default. [A-134]

(Finding conduct welcome where, "[t]he undisputed evidence showed that appellant engaged in behavior similar to that which she claimed was unwelcome and offensive.") Common sense, to say nothing of common decency, requires the same, if not higher standard for criminal "harassment" complaints is required by due process of law. Sadly, this is not the case.

[25] The Pennsylvania Legislature affirmed that giving false statements to a law enforcement officer about "harassment" commits a crime. 18 Pa. Purdon 2709(d). Unfortunately, this requirement is made worthless if the complaint is not required to commit the allegation to writing, since it becomes impossible to prove what the "victim" actually said. In practice, a legal fiction exists that the "victim" is not the accuser, and therefore, the defendant has no right to confrontation. Thus, they are not cases of "he said vs. she said" but really "he said vs. he said that she said". Since in the vast majority of these cases, the "victim" is female, and the accused is male, this amounts to gender discrimination, as well as a gross abuse of due process of law. (And to say nothing about the rules of evidence and hearsay.) Thus a higher standard of proof is required for civil "protection from abuse" orders than criminal "harassment" complaints. See 23 Pa. Purdon 6106(a).

[26] Compare *Jones v. Clinton*, 990 F. Supp. 657 (E.D. Ark. 1998) (no civil liability for then governor Clinton dropping his pants, exposing himself, and demanding sexual favors) with *Commonwealth v. Duncan* 363 A. 2d 803 (Pa. Superior 1976). (Criminal conviction for alleged private verbal sexual proposition. The defendant in *Duncan* was denied the right to trial by jury. The alleged facts of that case might very well have been different had a jury heard the case.)

The facts of the underlying, long suppressed, appeal pertain to a female PSU student, Laurie Ann Lindgren, who could not keep out of the private quarters of a men's dormitory, who waited until the Relator was in the middle of taking final exams and scheduled to graduate to complain to PSU's private, unconstitutional police department that she was offended by a poster appearing in public places on campus open to all university students. Lindgren also testified that her reaction to the poster was that she was "chuckling" about it. Her name did not appear on the poster, but she claimed it was directed at her because it made fun of her sorority. (Private correspondence improperly introduced into evidence demonstrated an ongoing disagreement between the Relator and Lindgren over her involvement in the sorority.) After seeing the poster, Lindgren illegally trespassed in the private quarters of the Relator's dormitory, accompanied by another uninvited male guest, for the purpose of causing a disturbance.[27]

The following day Lindgren met with PSU security guards who informed her she had been harassed. In her deposition, Lindgren testified she did not use the words "harass" or "harassment" in describing her complaint with Weaver, nor did she sign a statement, sworn or otherwise, regarding any complaint, nor did she request criminal prosecution. For his part security guard Weaver testified he had no standard set of questions to ask in such situations, nor did he have any doubt of Lindgren's "victim" status. Weaver testified he had no suspicions, despite the fact

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[27] District Judge Muir makes no mention of the fact that this was trespassing in his May 10, 1989 Opinion, but he certainly had to know it. As the sole federal Judge sitting in the Williamsport federal courthouse, Muir heard the vast majority of PSU's federal cases. In one of those cases, *American Future Systems, Inc. v. Penn State Univ.* 553 F. Supp. 1268 (1982) *same case also at* 464 F. Supp. 1252 (1979), Judge Muir, on two separate occasions, had to address the issue of privacy and trespassing in PSU dormitories. See *American Future Systems, Inc. II, supra* at 1272 ¶47-49, "Residence halls are reserved for the use of the residents and their properly invited guests...A 'no trespassing' sign is posted at our near the entrance of each residence hall on the Penn State Campus." See also *American Future Systems, Inc I, supra* at 1255 ¶11-14, (same facts). Nowhere in his May 10, 1989 Opinion does Judge Muir state that any of these facts had changed during the time period in question regarding the Relator's complaint.

Lindgren waited until the Relator was about to graduate to complain. According to Weaver, the Relator had harassed Lindgren for the entire three (3) semesters they were both at PSU's main campus.

Never-the-less, District Judge Muir insists that the Relator was "accused of harassment" [A-34]. In an Opinion containing a lugubrious ingemination of legal heresies, District Judge Muir claims the alleged "harassment" complaint justified a police investigation and authorizing a warrantless detention escalating to the point that *Miranda* warnings were given.[28] Muir falsely opined that the length of time a person is detained determines if a seizure occurred despite a plethora of binding authority to the contrary from this Court.[29] This is just a small sampling of the errors. Other issues including, privacy, the issue of the unconstitutional "company town" campus police department, and the practice of selectively prosecuting students for conduct violations who assert constitutional rights against the illegal police department were also butchered. The scope and page length of this petition prohibits further detail.

IX. CONCLUSION

AND HE SHALL FOREVER PRAY that this Honourable Court bind the Third Circuit with the iron chains of the constitution, reverse the Third Circuit December 6, 2002 Judgment, and adjudicate in this Court the unadjudicated appeal of the January 31, 1990 judgment of the U.S. District Court for the Middle District of Pennsylvania in this Court. Because the Third Circuit requires this Court's supervision, it is requested that this Court retain jurisdiction upon remand.

Respectfuly Submitted

Christopher A. Rogalski

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[28] Judge Muir would bizarrely site *Oregon v. Matiason* 429 U.S. 492, 494-95 (1976), in support of the proposition that the Relator was not seized or arrested, despite the fact that *Miranda* warnings were issued.

[29] See *Delaware v. Prouse*, 440 U.S. 643 at 653, 99 S. Ct. 1391 at 1395 (1979); *United States v. Martinez-Fuerte*, 428 U.S. 543 at 556, 96 S. Ct. 3074 at 3082, 1976. *United States v. Brighoni-Ponce* 422 U.S. 873 at 878, 95 S. Ct. 2574 at 2578 (1975). See also *Tennessee v. Garner* 471 U.S. 1, 108 S. Ct. 1694. (1985), "Whenever an officer restrains the freedom of a person to walk away, he has seized that person" 471 U.S. at pg. 7.

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UNREPORTED - NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-4479

THE UNITED STATES DEPARTMENT OF EDUCATION
Ex Relatione CHRISTOPHER A. ROGALSKI,
Appellant

v.

HENRY P. JANSEN; RADNOR TOWNSHIP; ROY K. LINDGREN;
PATRICIA LINDGREN; LAURIE ANN LINDGREN; DAVID MAGEE;
WILLIAM H. RYAN; HEATHER MATTES; JANE DOE

On Appeal From the United States District Court
For the Eastern District of Pennsylvania
(E.D. Pa. Civ. No. 01-cv-03691)
District Judge: Honorable Ronald L. Buckwalter

Submitted Under Third Circuit LAR 34. 1 (a)
November 26, 2002

BEFORE: SCIRICA, FUENTES and SMITH, Circuit Judges
(Filed *DEC -6 2002* [STAMPED])

OPINION

PER CURIAM.
Christopher A. Rogalski filed a pro se complaint in the United States District Court for the Eastern District of Pennsylvania in which he sought to present, inter alia, claims

[END PAGE 1]

under the qui tam provisions of the False Claims Act, 31 U.S.C. §§ 3729-3733. In Counts One and Two of the Complaint, Rogalski alleged that the named defendants effectively prevented him from repaying his student loans due to their actions in connection with various state court proceedings against Rogalski.[1] Rogalski claimed that the defendants' alleged unlawful acts were tantamount to a false claim upon the United States Department of Education (DOE), which guaranteed Rogalski's loans, and thus they deprived the DOE of the approximately $75,000 value of the loans that remains unpaid. Rogalski sought to recoup that amount on behalf of the DOE.

The Complaint's remaining Counts, which were premised upon the same allegations as the qui tam claims but which Rogalski brought solely on his own behalf, were as follows: Count Three (damages under 42 U.S.C. §§ 1983 and 1985); Count Four (damages for violations of "federally granted statutory rights"); Count Five (damages for violations of state law); Count Six (declaratory judgment as to the alleged violations of state and federal law); and Count Seven (injunctive relief).

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[1] According to Rogalski, the defendants engaged in "mail fraud, wire fraud, obstruction of justice, witness intimidation, witness retaliation, witness tampering, victim tampering, harassment, violation of [RICO] and conspiracy to commit the same acts." Complaint at ¶ 177.

Rogalski filed his Complaint under seal and served it upon the government, which filed notice of its election not to intervene. The government also suggested that the

[END PAGE 2

District Court dismiss the qui tam claims (Counts One and Two) because Rogalski's allegations failed to state a viable claim for relief under the False Claims Act.

By Order entered December 7, 2001,the District Court dismissed the Complaint in its entirety with prejudice. The District Court noted that no qui tam action would lie based on Rogalski's allegations. The District Court also noted that "it is clear from the complaint that any cause of action [Rogalski] may have against any named defendants [sic] is time-barred." The District Court declined to address Rogalski's "Motion to Recuse Patrick Meehan." Rogalski moved for reconsideration and filed a timely notice of appeal. The District Court subsequently denied reconsideration "as moot" given that Rogalski had already appealed to this Court. We have jurisdiction to review the District Court's final judgment pursuant to 28 U.S.C. § 1291.[2] We will affirm.

The District Court properly dismissed the qui tam claims with prejudice for the reasons fully explained in the government's Memorandum in Support of Dismissal of Counts One and Two. Rogalski offers no viable argument to the contrary on this appeal.

Rogalski's remaining Counts were asserted on his own behalf. The District Court dismissed those claims as time-barred. Rogalski contends that the District Court erred with respect to the section 1983 and 1985 claims because the

---

[2] Insofar as Rogalski challenges the denial of his Motion for Reconsideration, we lack jurisdiction to review that order as Rogalski did not appeal or file an amended notice of appeal from the order denying reconsideration. See Fed. R. App. P. 4(a)(4)(B)(ii).

state court actions that form the basis for those claims are "on-going," and thus, under Heck v. Humphrey, 512 U.S.

[END PAGE 3]

477 (1994), his claims for damages have yet to accrue. Appellant's Br. at 25. We reject this argument.

In Heck, a state prisoner sued for damages under § 1983, alleging that his conviction was obtained through unlawful procedures. 512 U.S. at 479. The Supreme Court held that the cause of action had yet to accrue because success in the suit would effectively invalidate the prisoner's underlying conviction and sentence. Id. at 486-87. The Court adopted a favorable-termination rule for § 1983 actions: if the success of a § 1983 damages suit "would necessarily imply the invalidity of [a] conviction or sentence," the claim is cognizable only if the plaintiff can prove that the conviction or sentence was reversed, invalidated, or called into question by a grant of habeas corpus. Id. at 486-87. In other words, a § 1983 cause of action for damages attributable to an unconstitutional conviction or sentence does not accrue until the conviction or sentence has been invalidated." Id. at 489-90. However, if the district court determines that the plaintiffs action, even if successful, will not demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed, in the absence of some other bar to the suit." Id. at 487.

Rogalski's § 1983 claims are not subject to the Heck rule. Rogalski's primary allegation is that the Delaware County Court of Common Pleas issued a "bogus" bench warrant on August 17, 1992, when Rogalski failed to appear for a parole revocation hearing, but that the local prosecutor's office has never acted on that warrant. According

[END PAGE 4]

to Rogalski, he has nevertheless been labeled a "fugitive from justice"- a label which has discouraged prospective employers from hiring him. Applying Heck, Rogalski's attack upon the validity of the bench warrant is not an attack upon an outstanding criminal judgment, as no criminal judgment resulted. Thus, the claim is not precluded under the favorable-termination rule.

The claim, however, is time-barred. A two-year limitations period governs § 1983 actions in Pennsylvania. Sameric Com. of Del., Inc. v. City of Phila., 142 F.3d 582, 599 (3d Cir. 1998).[3] Claims under § 1983 accrue when the "plaintiff knew or should have known of the injury upon which [the] action is based." Id. Rogalski's cause of action based on the 1992 bench warrant plainly accrued more than two years prior to the filing of his Complaint on July 24, 2001. Indeed, the allegations in his Complaint center exclusively upon alleged unlawful actions that occurred around the time the warrant was issued on August 17, 1992. See Complaint at ¶¶ 15-30. Rogalski's vague allegations of lost employment opportunities and an inability to repay his student loans due to the warrant do not serve to toll the limitations period and do not support a "continuing violation" exception to the time-bar.

Similarly, Rogalski's remaining § 1983 claims- which are premised on a 1989 "bogus" arrest warrant; the 1989 "refusal" to conduct a preliminary hearing; the 1990

[END PAGE 5]

"refusal" to conduct a preliminary hearing; two misdemeanor charges that were withdrawn in 1991; Rogalski's 1991 nolo

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[3] Claims under § 1985 are also subject to a two-year limitations period. Bougher v. University of Pittsburgh, 882 F.2d 74, 79 (3d Cir. 1989).

contendere plea to harassment, which resulted in an order of restitution to the victim plus 90-days probation; and the 1995 civil judgment for failure to pay the restitution- were all properly dismissed as time-bared under the two-year limitations period. In addition, because Rogalski filed this matter under seal as a qui tam action and thereby compelled the District Court to review the Complaint before service upon the defendants, see 31 U.S.C. § 3730(b)(2), and because the time-bar was obvious from the face of the Complaint, the District Court's sua sponte dismissal on statute of limitations grounds was appropriate under the circumstances. Cf. Ping v. Ryan, 49 F.3d 51, 53-54 (2d Cir. 1995). Thus, we hold that Count Three of the Complaint was properly dismissed with prejudice.

In Count Four, Rogalski alleged that the defendants deprived him of three "federally granted statutory rights": to repay his government loans without harassment, to receive an education, and to appeal from a decision that was rendered in 1990 by the United States District Court the Middle District of Pennsylvania on a lawsuit that Rogalski filed against Pennsylvania State University. See Complaint at ¶¶ 185-189. A review of Rogalski's appellate brief reveals no argument challenging the District Court's dismissal of these claims, and thus the appeal as to Count Four is deemed waived. See Nagle v. Alspach, 8 F.3d 1415 143 (3d Cir. 1993) ("When an issue is either not set forth in the statement of issues presented or not pursued in the argument section of the brief, the

appellant has abandoned and waived that issue on appeal."). For this same reason, any challenge to the dismissal of Count Five, which alleged claims under state law for "false arrest, malicious prosecution, official oppression, extortion, theft by extortion, assault, invasion of privacy, abuse of process, con-

spiracy and gender discrimination," has been abandoned and waived due to a failure to brief those claims.

Finally, Count Six sought declaratory relief, but no such relief could be afforded given that the underlying claims were properly dismissed. Likewise, the request in Count Seven for injunctive relief properly failed.

We have considered each of Rogalski's remaining arguments on appeal (including his contentions of bias on the part of the District Judge), and we find those arguments wholly without merit and in need of no discussion.

For the reasons stated, we will affirm the District Court's order dismissing the Complaint with prejudice. The motion for oral argument is denied.

November 12, 2002

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-4479

UNITED STATES DEPARTMENT OF EDUCATION,
Appellant

v.

HENRY P. JANSEN, ET AL
(EDPA D.C. No. 01-cv-03691(RLB))

Present: SCIRICA, FUENTES and SMITH, CIRCUIT JUDGES

1) Motion by Pro Se Appellant to Continue to Seal the Record.

Michael C. Williams 299-4940
Court Crier/Brief Specialist

Calendared:
Listed for Disposition: 11/26/02.

ORDER

The foregoing motion to continue to seal the record is DENIED.

By the Court,

Af Scxxx [signed-illegible]
Circuit Judge

Dated: *DEC - 6 2002* [stamped]
SMA CC TO: CR [hand written]

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 90-5175

CHRISTOPHER A. ROGALSKI,
Appellant

v.

THE PENNSYLVANIA STATE UNIVERSITY
a/k/a PENN STATE; AND
THE PENNSYLVANIA STATE UNIVERSITY
BOARD OF TRUSTEES; AND
BRYCE JORDAN, PRESIDENT; AND
DONALD T. SUIT; AND
DAVID E. STORMER; AND
W.E. WEAVER, OFFICER; AND
UNNAMED OFFICER OF THE PENN STATE CAMPUS

Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil Action No. 88-01730)
District Judge: Hon. Malcolm Muir

Submitted Under Third Circuit Rule 12(6)
August 20, 1990

Before: HIGGINBOTHAM, Chief Judge, MANSMANN and
GARTH,
Circuit Judges.

JUDGMENT ORDER

After consideration of all contentions raised by appellant, it is

[*END PAGE 1*]

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby AFFIRMED.

Costs taxed against appellant.

BY THE COURT,
/s/ *A. Leon Higginbotham, Jr.*
Chief Judge

Attest:
/s/ *Sally Mrvos*
Sally Mrvos, Clerk

DEC 26 1990 [STAMPED]

Costs taxed in favor of The Penna. State University, et al as follows:

Total of Brief.....$209.60

Certified as a true copy and issued in lieu of a formal mandate on March 6, 1991.

Test: /s/ *Sally Mrvos*

Clerk, U. S. Court of Appeals for the Third Circuit

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 90-5175

Christopher A. Rogalski, Appellant
vs.
The Pennsylvania State University, etc., et al.

To: Clerk

1) Motion to Bifurcate Appeal

The foregoing Motion is denied. Both orders will be considered by this Court at the same time.

Appellant's brief shall be filed and served on or before May 30, 1990. Appellees' brief shall be filed and served within thirty(30) days of service of appellant's brief. Appellant's reply brief, if any, shall be filed and served within fourteen(14) days of the date appellees' brief is served.

For the Court,
/s/ *Sally Mrvos*
Clerk

Dated: *APR 23 1990* [STAMPED]

DPS-56 OCTOBER 18, 1990

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

C.A. No. 90-5752

CHRISTOPHER A. ROGALSKI

vs.

PENNSYLVANIA STATE UNIVERSITY
Honarable [sic] Malcolm Muir, Nominal Respondent

(related to M.D. Pa. Civ. No. 88-01730)

Present: HIGGINBOTHAM, CHIEF JUDGE; MANSMANN and NYGAARD, CIRCUIT JUDGES

Submitted is Petitioner's petition for a writ of mandamus, pursuant to Rule 21, Federal Rules of Appellate Procedure

in the above-captioned case.

Respectfully,
/s/ *Sally Mrvos/JLH*
Clerk

SM/JLH/clj
enc.

The foregoing Petition for a writ of mandamus is DENIED.

By the Court,
/s/ *A. Leon Higginbotham*
Circuit Judge

Dated: *DEC 20 1990* [STAMPED]

BPS-42

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
No. 89-5820

CHRISTOPHER ROGALSKI

vs.

PENNSYLVANIA STATE UNIVERSITY, ET AL.

Related to (M.D. Pa. Civ. No. 88-1730)

PRESENT: GIBBONS, Chief Judge, STAPLETON and HUTCHINSON, Circuit Judges

Petitioner's Petition for a Writ of Prohibition pursuant to Rule 21, Federal Rules of Appellate Procedure in the above captioned case.

ORDER

The ~~foregoing Motion is denied.~~
Petition for a Writ of Prohibition is denied. [HANDWRITTEN]

By the Court,

/s/*Walter Stapleton*
Circuit Judge

Dated: *OCT 26 1989* [STAMPED]
DPS 25 September 7, 1989

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

C.A. No. 89-5612

CHRISTOPHER A. ROGALSKI

vs.

PENNSYLVANIA STATE UNIVERSITY, et al.

(M.D. Pa. Civil No. 88-1730)

Present: Higginbotham, Mansmann and Cowen, Circuit Judges

Submitted by the Clerk for possible dismissal due to a jurisdictional defect

in the above-captioned case.

Respectfully,
/s/ *Sally Mrvos (EID)*
Clerk

SM/EID/sb
enc.

The foregoing appeal of appellant is DISMISSED as untimely filed.

By the Court,
/s/ *A. Leon Higginbotham*
Circuit Judge

Dated: *OCT 18 1989* [STAMPED]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, ex rel. CHRISTOPHER A. ROGALSKI, Plaintiffs,	:	CIVIL ACTION NO. 01-3691
V.	:	**FILED UNDER SEAL**
HENRY P. JANSEN, et al., Defendants.	:	***FILED DEC 7-2001*** [*STAMPED*]

MEMORANDUM/ORDER

Petitioner, *pro se*, filed a 212 paragraph 27 page complaint captioned as above, on July 24, 200 1. On October 4, 200 1, the United States filed Notice of its Election to Decline Intervention. Along with this notice, it also filed a Suggestion of Dismissal of Counts One and Two. This filing was served on plaintiff on October 3, 200 1. Plaintiff has responded to this suggestion of dismissal in a Motion to Recuse Patrick Meehan filed October 22, 200 1, which he, according to his certificate of service, served on the U.S. Attorney General's Office in Washington, D.C. To date, the government has not responded to plaintiff s motion.

Since it is clear from the complaint that any cause of action plaintiff may have against any named defendants is time-barred, the court will not respond to either of the motions in this case. Interesti-gly, the qui tam action seeks to recover for the

ENTERED
DEC 7 2001
[STAMPED]

[*END PAGE 1*]

Department of Education the student loans plaintiff has not been able to repay, allegedly because of the acts of the defendants, a novel concept but not one for which a qui tam action would lie.

AND NOW, this 6' day of December, 200 1, it is hereby **ORDERED** that the complaint (Docket No. 1) filed in this matter on July 24, 2001 is **DISMISSED**, with prejudice.

This case is **CLOSED**.

BY THE COURT:
/S/Ronald L. Buckwalter
RONALD L. BUCKWALTER, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RB *10*
[HANDWRITTEN] *[HANDWRITTEN&CIRLCLED]*

UNITED STATES OF AMERICA, ex rel. : CHRISTOPHER A. ROGALSKI,	:	CIVIL ACTION NO. 01-3691
Plaintiffs,	:	
	:	**FILED UNDER**
V.	:	**SEAL**
	:	
HENRY P. JANSEN, et al.,	:	*FILED JAN 15 2002*
Defendants.	:	*MICHEAL E. KUNZ, Clerk*
		By/s/illegible Dep. Clerk
		[STAMPED]

ORDER

AND NOW, this 14th day of January, 2002, it is hereby **ORDERED** that the Motion for Reconsideration (Docket No. 6) is DENIED as MOOT, the Relator having advised the court and filed with it a Notice of Appeal to the Third Circuit.

BY THE COURT:

/s/RONALD L. BUCKWALTER
RONALD L. BUCKWALTER, J.

1-15-02
C. Rogalski
N. Uygur
[HANDWRITTEN]

ENTERED
JAN 15 2002
CLERK OF COURT
[STAMPED]

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CHRISTOPHER A. ROGALSKI,	:	
	:	
Plaintiff	:	3: Cv-88-1730
vs.	:	Complaint Filed
	:	7/11/88
PENNSYLVANIA STATE	:	(Judge Muir)
UNIVERSITY, et al,	:	
Defendants	:	

FILED
Williamsport, PA
JAN 31, 1990
DONALD R.
BERRY, Clerk
PER.....sl.....
DEPUTY CLERK
[STAMPED UPPER, RIGHT HAND SIDE]

ORDER
January 31, 1990

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On December 5, 1989, Rogalski filed a motion for reconsideration of our order of November 21, 1989, granting the Defendants attorney's fees pursuant to 42 U.S.C. §1988. On December 19, 1989, Rogalski filed a brief in support of his motion. On January 5, 1990, the Defendants filed a brief in opposition to Rogalski's motion. On January 22, 1990, Rogalski filed a reply brief and this motion is now ripe for disposition.

Rogalski asserts that we improperly awarded attorney's fees to the Defendants because no judgment in favor of the Defendants was entered by the Clerk following our order granting summary judgment in the Defendants' favor on May 10, 1989. Rogalski asserts that the Defendants may not be considered prevailing parties for the purposes of 42 U.S.C. §1988 because the Clerk of Court has entered no judgment in their favor. This is nonsense. The Defendants clearly

[*END PAGE 1*]

prevailed. The granting of summary judgment constitutes a final judgment on the merits and as such is appealable. Hubicki vs. ACF Industries, Incorporated, 484 F.2d 519, 524 (3d Cir. 1973) (stating that "the law is clear that summary judgment is a final judgment on the merits sufficient to raise the defense of res judicata....") Rogalski filed an appeal with the United States Court of Appeals for the Third Circuit on July 13, 1989, thus recognizing the finality of our order. We therefore find no merit to Rogalski's argument. Rogalski presents nothing further for us to consider other than a restatement of facts which were considered in our granting of the Defendants' motion for summary judgment.

Rogalski, on December 19, 1989, filed a praecipe to the Clerk to enter judgment in Defendants' favor and the Clerk should have done so.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Christopher A. Rogalski's motion filed on December 5, 1989, for reconsideration of our order of November 21, 1989, granting attorneys' fees to the Defendants is denied.

2. The Clerk shall comply with Rogalski's praecipe filed December 19, 1989, to enter judgment in Defendants' favor.

/s/Muir
MUIR, U.S. District Judge

MM:as

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CHRISTOPHER A. ROGALSKI,	:	
Plaintiff	:	3: Cv-88-1730
vs.	:	Complaint Filed 7/11/88
PENNSYLVANIA STATE UNIVERSITY, et al,	:	(Judge Muir)
Defendants	:	

FILED
Williamsport, PA
NOV 21, 1989
DONALD R.
BERRY, Clerk
PER.....sl.....
DEPUTY CLERK
[STAMPED UPPER, RIGHT HAND SIDE]

OPINION

MUIR, District Judge,

I. Introduction.

On July 11, 1988, the Plaintiff, Christopher A. Rogalski, filed a complaint in the United States District Court for the Eastern District of Pennsylvania against the Pennsylvania State University, various officials of the Pennsylvania State University, the Commonwealth of Pennsylvania, and Governor Robert Casey, alleging violations of his constitutional rights. On September 4, 1988, an order was entered dismissing the complaint against the Commonwealth and Governor Casey. On September 9, 1988, this action was transferred to the Middle District of Pennsylvania.

On May 10, 1989, we granted a motion for summary judgment as to the remaining Defendants. On July 10, 1989, the Defendants filed a motion for counsel fees pursuant to 42

U.S.C. §1988. A hearing was held on October 27, 1989, to determine whether the Defendants are entitled to counsel

[*END PAGE 1*]

fees and, if so, the amount thereof. The following are the Court's findings of fact, discussion, and conclusions of law.

II. Findings of Fact.

1. Plaintiff, Christopher A. Rogalski, 23 years of age, resides at 503 Bradford Avenue, Warrington, Pennsylvania, 18976.
2. Rogalski graduated from The Pennsylvania State University in April, 1987.
3. Rogalski is currently enrolled as a third year law student at the Dickinson School of Law.
4. Rogalski has spent a summer as a law clerk for the Honorable John W. Keller, President Judge of the Thirty-Ninth Judicial District of the Court of Common Pleas of the Commonwealth of Pennsylvania.
5. Rogalski is presently employed as a law clerk for the Pennsylvania Civil Service Commission.
6. Rogalski has represented himself in this case.
7. Rogalski initiated this lawsuit by filing a complaint with the United States District Court for the Eastern District of Pennsylvania on July 11, 1988.
8. On September 9, 1988, the United States District Court for the Eastern District of Pennsylvania transferred this action to the Middle District of Pennsylvania.
9. Rogalski's complaint asserted numerous constitutional claims predicated on 42 U.S.C. §1983 and was based entirely upon two incidents which occurred while he

[*END PAGE 2*]

was enrolled as a student at the Pennsylvania State University.
10. The first incident which gave rise to Rogalski's complaint occurred on May 6, 1987, when he attended a 20-minute meeting with two campus police officers employed by the Defendant Pennsylvania State University, during which he was questioned concerning his alleged harassment of a female co-ed at the University.

11. The second incident which gave rise to Rogalski's complaint occurred subsequent to the meeting with the campus police officers, when he received a letter from the Director of the Office of Conduct Standards at Pennsylvania State University which notified him that he had been charged with a violation of the code of student conduct and that the proposed sanction against him included disciplinary probation through the fall semester of 1987.
12. Neither of the two incidents upon which Rogalski based his Complaint caused him any actual injury.
13. Neither of the two incidents upon which Rogalski based his Complaint presented any facts which gave rise to any violation of his constitutional rights.
14. Prior to the transfer of this case to the Middle District, Rogalski caused a subpoena duces tecum to be served upon Bell of Pennsylvania for records documenting phone calls made by a student who had accused Rogalski of harassing her.

[END PAGE 3]

15. On September 1, 1988, the Defendants filed a motion for protective order against the deposition of a designee of Bell Telephone Company of Pennsylvania and for an order quashing the subpoena duces tecum.
16. On November 15, 1988, we quashed Rogalski's subpoena duces tecum served on Bell of Pennsylvania.
17. Rogalski considered discontinuing his action after his subpoena duces tecum was quashed by our order of November 15, 1988.
18. On November 21, 1988, Rogalski filed a motion for reconsideration of our Order quashing subpoena duces tecum which we denied on January 3, 1989.
19. On November 29, 1988, Rogalski filed a "Motion to Protect" only three days before his deposition was scheduled to take place.
20. On November 30, 1988, we granted Rogalski a one-hour delay in the deposition and denied his motion in all other respects.

21. On December 13, 1988, Rogalski filed another Motion for Protection which we denied with the exception of granting a four-hour delay.
22. On March 14, 1989, Defendants filed a Motion for a Protective Order in response to Rogalski's attempt to take a second deposition of the Defendant Weaver.
23. The Defendants' Motion for Protective Order was granted.

[END PAGE 4]

24. On March 9, 1989, Rogalski filed a Motion to Strike from the record certain documents pertaining to campus police reports referred to Penn State's Office of Conduct Standards and a Motion to Compel Defendants to respond to his request for production of documents.
25. On March 10, 1989, Rogalski filed a Motion for Sanctions regarding the Defendants' alleged incomplete response to his request for production of documents and a Motion to Compel Answers to Interrogatories.
26. On March 20, 1989, Rogalski filed motions amending two of the four motions referred to in the previous two paragraphs.
27. None of the six Motions filed by Rogalski between March 9, 1989 and March 20, 1989, were supported by briefs as required by our local rules.
28. Defendants filed briefs in opposition to Rogalski's motions and all of the motions were dismissed because of Rogalski's failure properly to support his motions by briefs.
29. Rogalski made no attempt to withdraw his motions filed in March, 1989 or to notify Defendants' attorneys or the Court of any intention to withdraw them.
30. On March 31, 1989, Defendants filed a motion for summary judgment.
31. On May 10, 1989, we granted Defendants' motion for summary judgment and dismissed all of Rogalski's pendent state law claims.

[END PAGE 5]

32. On May 26, 1989, Rogalski filed a motion for reconsideration of our opinion and order of May 10, 1989.

33. On June 13, 1989, we dismissed Rogalski's motion for reconsideration as untimely and further noted that his motion was without merit.
34. On July 10, 1989, the Defendants filed a motion for counsel fees pursuant to 42 U.S.C. §1988.
35. On July 13, 1989, Rogalski filed a notice of appeal to the United States Court of Appeals for the Third Circuit.
36. On August 29, 1989, Rogalski filed a motion to stay the hearing on Defendants' motion for counsel fees pending appeal which we denied on September 6, 1989.
37. On September 1, 1989, Rogalski filed a motion for sanctions against Defendants claiming that their motion for counsel fees was frivolous. On October 17, 1989 we denied Rogalski's motion for sanctions.
38. On October 18, 1989, Rogalski's appeal to the Court of Appeals for the Third Circuit was dismissed as untimely.
39. Rogalski has continued to litigate this action once he knew, or should have known, that the action was without merit.
40. Throughout the course of this litigation, Rogalski engaged in the filing of motions which were without merit.
41. Throughout the course of this litigation, Rogalski repeatedly filed motions accusing the Defendants and their

[END PAGE 6]

counsel of misconduct and failed to support these motions with briefs as required by the Local Rules.
42. Despite the failure of Rogalski repeatedly to support his motions with briefs, the Defendants were reasonably of the view that they were obliged to respond to the motions and as a result incurred substantial expense in defending against the allegations in these motions.
43. Rogalski has throughout the course of this litigation, displayed a disregard for the Defendants, the Practice Order, the Local Rules and for the Court itself.
44. Rogalski knew that the Defendants would obtain counsel and that counsel would charge the Defendants a fee.
45. Rogalski was aware of the expense and time-consuming nature of a lawsuit and particularly of this one.

46. Rogalski is a law student who at all times during the course of this litigation had access to the law library at the Dickinson School of Law.
47. The Defendants have incurred substantial counsel fees in connection with the defense of this lawsuit.
48. Defendants' counsel have submitted into evidence copies of bills for fees and expenses rendered to the Defendants and time records kept in connection with this case in accordance with the provisions of this Court's Practice Order.

[END PAGE 7]

49. Defendants' counsel maintained a detailed record of the time spent and the tasks performed in this action contemporaneously with the work performed.
50. From July 25, 1988, through April 24, 1989, Attorney James M. Horne spent a total of 60.5 hours on this case at a rate of $65.00 per hour.
51. From May 1, 1989, through September 21, 1989, Attorney Horne spent a total of 5.7 hours on this case, at a rate of $75.00 per hour.
52. From July 25, 1988, through April 24, 1989, Attorney Michael Koll spent a total of 23.8 hours on this case, at a rate of $55.00 per hour.
53. From July 25, 1988, through February 21, 1989, Paralegal Karen Hobble spent a total of 6.3 hours on this case at a rate of $40.00 per hour.
54. From February 22, 1989, through September 21, 1989, Paralegal Hobble spent a total of 1.7 hours on this case, at an hourly rate of $45.00.
55. From July 25, 1988, through September 21, 1989, Attorney Paul Tomczuk spent a total of 3 hours on this case at an hourly rate of $55.00.
56. On February 27, 1989, Attorney Wendell Courtney spent a total of 10 hours on this case at an hourly rate of $75.00 per hour.
57. Disbursements by Defendants for postage expenses incurred in this case between July 25, 1988, and September 21, 1989, totalled $4.70.

[END PAGE 8]

58. Disbursements by Defendants for courier costs incurred in this case between July 25, 1988, and September 21, 1989, totalled $12.00.
59. Disbursements by Defendants for phone expenses incurred in this case between July 25, 1988 and September 21, 1989, totalled $50.95.
60. Disbursements by Defendants for photocopy expenses incurred in this case between July 25, 1988, and September 21, 1989, totalled $526.00.
61. Disbursements by Defendants for travel expenses incurred in this case between July 25, 1988, and September 21, 1989, totalled $33.36.
62. Disbursements by Defendants for depositions taken in this case between July 25, 1988, and September 21, 1989, totalled $100.00.
63. Attorney's fees incurred in this case from July 25, 1988, through September 21, 1988, totalled $6,912.50.
64. Expenses incurred by Defendants in this case from July 25, 1988, through September 21, 1989, totalled $727.01.
65. The total amount of attorney's fees and expenses incurred in this case from July 25, 1988, through September 21, 1989, is $7,639.51.

III. Discussion.

The Defendants contend that they are entitled to an award of attorney's fees against Rogalski pursuant to 42 U.S.C. §1988. 42 U.S.C. §1988 permits the award of

[END PAGE 9]

attorney's fees in civil rights actions and provides in pertinent part:

> In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

42 U.S.C. §1988 (1980). A Plaintiff is a prevailing party if he or she succeeds on any significant issue in the litigation but a Defendant is only considered a prevailing party "...upon a finding that the Plaintiff's action was frivolous, unreasonable,

or without foundation, even though not brought in subjective bad faith." Christiansburg Garment Co. vs. Equal Employment Opportunity Commission, 434 U.S. 412, 421 (1978). Although Christiansburg was addressing the issue of attorney's fees under §706(k) of Title 7 of the Civil Rights Act of 1964, it contains language similar to 42 U.S.C. §1988 and the standards are identical. Hughes vs. Rowe, 449 U.S. 5, 14 (1980). The Christiansburg Court noted the importance of avoiding "post-hoc reasoning" and the "hindsight logic" of concluding a suit is without foundation because the Plaintiff did not ultimately prevail in his action. Christiansburg, 434 U.S. at 422. Congress, however, also wanted to protect Defendants from burdensome litigation which is without legal or factual basis and discourage frivolous suits. Id. at 420. The standard to be applied is an objective one and the Plaintiff's honest belief in the worth of his case does not

[END PAGE 10]

make it meritorious. Brown vs. Fairleigh Dickinson University, 560 F.Supp. 391, 404 (D. N.J. 1983).

We must first determine whether Rogalski's actions in this case were unreasonable, frivolous, meritless, or vexatious. Determination of the action's frivolousness and the award of attorney's fees are within the discretion of the District Court. Christiansburg, 434 U.S. at 416.

Rogalski's complaint alleged numerous violations of his constitutional rights yet he was unable to substantiate any of those claims and presented no facts which gave rise to any constitutional violations. Rogalski suffered no actual injury as a result of his questioning by the campus police or his receipt of the letter by Penn State's Office of Conduct Standards. Although Rogalski may possibly have believed that his action was brought in good faith, the inquiry is not whether the Plaintiff reasonably believed there to be grounds but rather whether there were actually grounds for the suit. Brown, 560 F.Supp. at 407. The fact that Rogalski proceeded pro se does not change the standard when a groundless suit was filed. Id. Rogalski himself admitted that he considered discontinuing this action as early as November, 1988, before we granted Defendants' motion for summary judgment. Even if it was not

apparent to Rogalski that his claims were frivolous or groundless at the onset of this case he continued to litigate this action after it clearly became so. Rogalski filed numerous motions which were either unsupported by briefs or untimely filed.

[*END PAGE 11*]

The Defendants were of the view that they were obliged to respond to Rogalski's motions, did so, and incurred substantial expense in doing so.

The grounds for suit must have some foundation in law that is justified by fact. We are of the view that Rogalski had the clear means to determine that the facts that he asserted could not have supported any of his constitutional claims. We are also of the view that Rogalski continued to pursue this action after it should have been clear that his claims were without merit. For these reasons, an award of attorneys' fees and costs to the Defendants appears appropriate.

The Defendants' counsel incurred a total of $7,639.51 through September 21, 1989, in attorney's fees and expenses. The amount may be broken down as follows:

Counsel fees for defense of case	$6,912.50
Costs incurred during defense of case	727.01

At the hearing on Defendants' application for attorney's fees and costs, Attorney Horne introduced an itemized statement of services rendered, hours expended, and costs incurred in his firm's representation of the Defendants. He testified that the time records were maintained contemporaneously with the work performed. Rogalski did not challenge the reasonableness of the hourly rate, the costs or the time expended. He argued only that an award of counsel fees would be improper. We are of the view that the

[*END PAGE 12*]

time spent in defending this action and the rate charged by Defendants' attorneys are reasonable.

We have considered the testimony at the hearing and have reviewed the file, the itemized statement of services rendered, hours expended, and costs incurred and conclude

that attorneys' fees and expenses totalling $7,639.51 through September 21, 1989, is reasonable and should be awarded.

IV. Conclusions of Law.

1. Rogalski's action was frivolous, unreasonable, and without foundation as were the numerous motions and actions taken by him throughout the course of this lawsuit.
2. The Defendants are entitled to reasonable counsel fees and expenses pursuant to 42 U.S.C. §1988.
3. The attorney's fees incurred in this case through September 21, 1989, totalling $6,912.50 were reasonable.
5. The expenses incurred in this case through September 21, 1989, totalling $727.01 were reasonable.
6. Rogalski is liable to the Defendants in the amount of $7,639.51 pursuant to 42 U.S.C. §1988 for fees and costs through September 21, 1989.

An appropriate order will be entered.

/s/Muir
MUIR, U.S. District Judge

DATED: *November 21, 1989* [handwritten]

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CHRISTOPHER A. ROGALSKI, :

Plaintiff : 3: Cv-88-1730
vs. : Complaint Filed 7/11/88
PENNSYLVANIA STATE UNIVERSITY, et al, : (Judge Muir)

Defendants :

FILED
Williamsport, PA
NOV 21, 1989
DONALD R.
BERRY, Clerk
PER.....sl.....
DEPUTY CLERK
[STAMPED UPPER, RIGHT HAND SIDE]

ORDER

1. The application for attorney's fees and costs filed in the above case is granted.

2. The Clerk shall enter judgment against Christopher A. Rogalski and in favor of the Defendants in the amount of $7,639.51 for attorney's fees and costs incurred in this case through September 21, 1989.

/s/Muir

MUIR, U.S. District Judge

DATED: *November 21, 1989* [handwritten]

as

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CHRISTOPHER A. ROGALSKI, :

Plaintiff : 3: CV-88-1730

vs. : Complaint Filed
7/11/88

PENNSYLVANIA STATE : (Judge Muir)
UNIVERSITY, et al., :

Defendants :

FILED
OCT 17, 1989
DONALD R. BERRY,
Clerk
PER....bp.....
DEPUTY CLERK
[STAMPED UPPER,
RIGHT HAND SIDE]

ORDER
October 17, 1989

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On September 1,1989, Rogalski filed a motion for sanctions against the Defendants for filing a petition for counsel fees in this case. On September 15, 1989, Rogalski filed his brief in support of his motion for sanctions. On September 25, 1989, Defendants filed their brief in opposition to the Plaintiff's motion. No reply brief has been filed and this motion is now ripe for disposition.

Rogalski has filed his motion pursuant to Fed.R.Civ.P. 11 and Local Rule 119.1 which permits the Court to impose sanctions against a party who has acted in violation of these rules. Rogalski asserts that Defendants' filing of a motion for award of attorney's fees is not in accordance with the congressional

intent of 42 U.S.C. §1988 of the Civil Rights Attorneys' Fees Awards Act of 1976 and does not comply with ¶9.1 of our civil practice order.

[*END PAGE 1*]

As stated in our order of September 6, 1989, Defendants' filing of a motion for counsel fees is neither inappropriate under 42 U.S.C. §1988 nor disallowed by ¶9.1 of our civil practice order. We held that it was not improper for Defendants to file a motion for counsel fees under those two provisions. We will not repeat the reasoning of our September 6 order here.

Fed.R.Civ.P. 11 which governs the signing of pleadings and motions requires that each pleading or motion be signed by an attorney. The Rule provides in relevant part that:

> ...The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation .... If a pleading, motion or other paper is signed in violation of this Rule, the Court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

The Notes of the advisory Committee on the Federal Rules point out that the Rule "stresses the need for some pre-filing inquiry into both facts and law to satisfy the affirmative duty imposed by the law." The standard for testing conduct under Rule 11 is objective reasonableness under the

circumstances. Evenson, Auchmuty, and Greenwald vs. Holtzman, 775 F.2d 535, 540 (3d Cir. 1985). The purpose [END PAGE 2]

is to permit the Court to award expenses to a litigant whose opponent has acted in bad faith in instituting litigation.

Defendants' motion for counsel fees was brought pursuant to 42 U.S.C. §1988 which permits the award of attorney's fees to the "prevailing party". A hearing has been scheduled to determine the issue of counsel fees and it would be inappropriate for us to decide the merits of Defendants' motion at this time. Defendants' motion does, however, set forth sufficient argument and it appears that they fulfill the Rule 11 requirement that a pre-filing inquiry be made into both facts and law. We are not convinced that Defendants' motion for counsel fees was filed in bad faith and we will therefore deny Rogalski's motion for sanctions.

NOW, THEREFORE, IT IS ORDERED THAT:

Rogalski's motion for sanctions filed on September 1, 1989, is denied.

/s/*Muir*
MUIR, U.S. District Judge
MM:as

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CHRISTOPHER A. ROGALSKI, :

Plaintiff : 3: Cv-88-1730

vs. : Complaint Filed 7/11/88

PENNSYLVANIA STATE UNIVERSITY, et al, : (Judge Muir)

Defendants :

FILED
Williamsport, PA
MAY 10, 1989
DONALD R. BERRY, Clerk
PER.....bp.....
DEPUTY CLERK
[STAMPED UPPER, RIGHT HAND SIDE]

OPINION

MUIR, District Judge.

Introduction.

On March 31, 1989, the Defendants filed a motion for summary judgment and a brief in support thereof. On April 18, 1989, Rogalski filed his brief in opposition to the Defendants' motion. On April 20, 1989, counsel for the Defendants notified this Court that they would not file a reply brief. The Defendants' motion for summary judgment is now ripe for disposition.

Facts.

Rogalski's complaint is based upon events which occurred at the campus of the Pennsylvania State University, State College, Pennsylvania ("Penn State"), in May, 1987, the month in which Rogalski graduated from Penn State. The events which gave rise to Rogalski's complaint came about as the result of Rogalski's amorous aspirations towards Laurie A. Lindgren, another student at Penn State. Rogalski apparently met Lindgren in a Speech Communication class

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which they had together in the Spring of 1986. (Rogalski Deposition at 87-88). Over the course of the next year Rogalski had various conversations with Lindgren both over the telephone and in person. (Rogalski Deposition at 89-90). As a result of Rogalski's contacts with Lindgren he came to believe that she desired to sleep with him. (Rogalski Deposition at 98). Rogalski never asked Lindgren to go out on a date, but around Valentine's Day, 1987, he sent her a stuffed "Opus doll" and a "very nice letter, "hoping to entice Lindgren to sleep with him. (Rogalski Deposition at 97-98). Soon after Lindgren received the Opus doll and letter, she went to Rogalski's dorm room and, according to Rogalski, told him that he had "some nerve." (Rogalski Deposition at 101.) Subsequently, Lindgren returned Rogalski's Opus doll to him, as well as two letters he had written to her. (Rogalski Deposition at 103).

Sometime after Spring break, 1987, Rogalski wrote Lindgren a letter in which he stated "I'll save you the trouble of avoiding me because it will be a very cold day in hell before I talk to you again." (Defendants' Exhibit 1). Subsequently, Rogalski wrote Lindegren [sic] another letter in which he stated:

> I've decided to stop ignoring you. I am having more fun watching you squirm every time I see you. I am really having fun playing this game of yours. I hope you are too!

(Defendants' Exhibit 2; Rogalski Deposition at 121). Lindgren then went to Rogalski's dormitory room a second time and, according to Rogalski, told him that "...if you

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ever write any more letters to me, I am going to throw them right in the trash or something like [sic]. I don't ever want to talk to you again, something to that effect." (Rogalski Deposition at 113).

In early May, 1987, Rogalski placed certain posters on the Penn State Campus which depicted himself along with the words "1987, Chi Omega Man of the Year for Guts Above and Beyond the Call of Duty." (Defendants' Exhibit 6; Rogalski Deposition at 17). Thereafter, Laurie Lindgren, along with a male companion, went to Rogalski's State College dormitory room and left an abusive note which was written on one of Rogalski's posters. (Rogalski Deposition at 19-21). On May 7, 1987, Rogalski took the poster to the campus police where he spoke with Officer Weaver who refused to do anything about it. (Rogalski Deposition at 21).

Rogalski states that on May 6, 1987, he saw Laurie Lindgren at a dining hall where she "...became highly emotional after seeing Plaintiff and observing that he was not-intimidated but rather annoyed at her note." (Rogalski Deposition at 22). According to Rogalski Lindgren then went to the campus police and, "...while still in a highly emotional and irrational mental state met with Officer W.E. Weaver." (Complaint, ¶21; Rogalski Deposition at 24-25). Subsequently, Rogalski received a phone call from Officer Weaver who requested a meeting with him. (Rogalski Deposition at 25, 31-33). Rogalski claims that Officer Weaver threatened him during the phone conversation by

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stating that if he did not appear at campus police headquarters it could adversely affect his future which Rogalski interpreted as a threat against his planned graduation. (Rogalski Deposition at 36). Rogalski subsequently went to campus police headquarters to meet with Officer Weaver. (Rogalski Deposition at 37).

Upon arriving at campus police headquarters Officer Weaver took Rogalski to a room in which another officer, Officer Robinson, was present. (Rogalski Deposition at 38-40). Rogalski states that he believes that the door to the room was locked because "I didn't have any reason to believe that it

wasn't locked," and "...the door was shut and I believed that it was locked." (Rogalski Deposition at 39). In the room Officer Weaver told Rogalski " ...first of all, you are not under arrest, which I was aware of that [sic]." (Rogalski Deposition at 45). Officer Weaver read Rogalski his Miranda rights and asked him to sign a document. (Rogalski Deposition at 46). Officer Weaver then informed Rogalski that he had been charged with harassment. (Rogalski Deposition at 46-47). Rogalski told Officer Weaver that he understood that he bad the right to remain silent, that anything that he said could be used against him in a court of law, that he had the right to have an attorney present during the questioning, and that he could stop the questioning at any time and request an attorney. (Rogalski Deposition at 47).

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Rogalski states that Officer Weaver "became very snotty" and told him that he had been charged with a summary criminal offense. (Rogalski Deposition at 50, 52). Rogalski then became either upset or annoyed and told Officer Weaver that he was going to attend law school in the fall and that he knew exactly what a summary criminal offense was. (Rogalski Deposition at 50-52). Rogalski told Officer Weaver that he would have preferred to have the matter taken before a local magistrate, and that Officer Weaver then became visibly upset, stating that what Rogalski had to say would determine whether Officer Weaver would take him in front of the Magistrate. (Rogalski Deposition at 52-53). Officer Weaver then questioned Rogalski about his relationship with Laurie Lindgren. (Rogalski Deposition at 53-54). According to Rogalski, Officer Weaver was abusive with him and " ...started screaming at me that this has to stop." (Rogalski Deposition at 54-55). Subsequently, Officer Weaver told Rogalski that he was free to go and "...said something to the effect if you have any other problems, come down here and see me or something like that." (Rogalski Deposition at 61). The entire interview lasted approximately 20 minutes. (Rogalski Deposition at 61).

Subsequent to Rogalski's interview with Officer Weaver, Rogalski received a letter from Dr. Donald T. Suit,

Director of the Office of Conduct Standards, which informed him that he had been charged with a violation of the Code of Conduct and that he should respond to the charge within 10 business

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days. (Defendants' Exhibit 7). The letter from Dr. Suit's office indicates a proposed sanction that included:

> Disciplinary probation through the fall semester of 1987 along with the condition that you make no unsolicited contact with the victim. Any additional unsolicited contact would result in a separation from the University.

Rogalski indicates that he responded to the letter from Dr. Suit's office, but that he viewed it as a joke and didn't believe that the letter dignified a response. (Rogalski Deposition at 135). Rogalski is unaware whether any disciplinary action was actually taken against him and acknowledges that the letter from Dr. Suit's office did not affect his attendance at Dickinson Law School. (Rogalski Deposition at 71). Rogalski further concedes that his only injury as the result of the conduct of the Defendants was that he was deprived of his "basic dignity which we allow people in this society." (Rogalski Deposition at 126).

Discussion.

In considering a motion for summary judgment, we must ascertain on the basis of pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, whether or not there are any genuine issues of material fact, and if none, whether the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56; Peterson vs. Lehigh Valley District Council, 676 F.2d 81, 84 (3rd Cir. 1982). An issue is genuine only if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson

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vs. Liberty Lobby, Inc., 106 S. Ct. 2505, 2510 (1986); Hanks vs. Temple University, 829 F.2d 437, 440 (3d Cir. 1987); Equimark

Community Finance Co. vs. C.I.T. Financial Services Corp., 812 F.2d 141, 144 (3d Cir. 1987). If evidence is merely colorable or not significantly probative, summary judgment must be granted in favor of the movant. Anderson, 106 S. Ct. at 2511. When the record, taken as a whole, could not lead one to find for the non-moving party, summary judgment must be entered in favor of the movant. Matsushita Electric Industrial Co., Ltd. vs. Zenith Radio Corp., 106 S. Ct. 1348, 1356 (1986).

In his complaint, Rogalski raises several federal and pendent state law claims. If Rogalski's federal claims are legally deficient, then we must also dismiss the pendent state law claims. United Mineworkers of America vs. Gibbs, 383 U.S. 715, 726 (1966). Therefore, we will first consider Rogalski's federal claims.

Rogalski's numerous constitutional claims are predicated on 42 U.S.C. §1983 and arise from two basic events: his interview with two campus police officers, and the subsequent letter he received from the office of Dr. Donald Suit which notified him of pending disciplinary action. We will address these two events, and the constitutional issues which flow from them, in turn.

Rogalski's claimed constitutional violations stemming from his interview with Officer Weaver and Officer Robinson of the Pennsylvania State University Campus police are that

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he was falsely arrested and falsely imprisoned by those officers, which he claims constitute violations of his fourth and fifth amendment rights. He claims that the questions asked of him by Officer Weaver violated his right to privacy. Rogalski also claims that University President Bryce Jordan, the University Board of Trustees, and the University President itself are liable for the actions of the campus police officers because they failed to supervise those men properly. In addition, Rogalski claims that 71 Pa. Cons. Stat. Ann. §646 (Purdon 1962 & Supp. 1988), which authorizes State Colleges to employ "campus police" is unconstitutional because campus police are not responsible to any locally elected official. Finally, Rogalski claims violations of his rights under the third and ninth amendments of the United States Constitution.

As a preliminary matter, we will consider Rogalski's third and ninth amendment claims. The third amendment of the United States Constitution pertains to the quartering of troops in private homes. We fail to see how the third amendment can have any possible bearing on Rogalski's complaint.

Rogalski also claims a violation of the ninth amendment. Although the ninth amendment protects rights not enunciated in the first eight amendments, it has never been recognized as independently securing any constitutional right for purposes of pursuing a civil rights claim. Strandburg vs. City of Helena, 791 F.2d 744, 748 (9th Cir.

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1986); cf. United States vs. Criden, 675 F.2d 550, 556 (3d Cir. 1982) (noting only that the ninth amendment supports the existence of rights not explicitly mentioned in the United States Constitution). The Supreme Court has expressed concern that a section 1983 claim be based upon a specific constitutional guarantee. Daniels vs. Williams, 106 S. Ct. 662, 668 (1986). Accordingly, we see no basis for Rogalski's claims under the ninth amendment.

In the briefs supporting their motion for summary Judgment, the Defendants argue that Rogalski lacks standing to challenge the constitutionality of 71 Pa. Cons. Stat. §646 because he is no longer a student at Penn State. Rogalski stated in his deposition that he has been back to Penn State on no more than 10 occasions since his graduation. (Rogalski Deposition at 126). In his prior pleadings filed with this Court Rogalski took great pains to point out that he is a second year law student and currently enrolled at the Dickinson School of Law. Now for the first time, in his brief in opposition to the Defendants' motion for summary judgment, he asserts that he is enrolled as a graduate student at Penn State and that he is a candidate for the Board of Trustees at Penn State. Rogalski has supplied an affidavit, given under penalty of perjury, supporting his new assertion. Because Rogalski has refuted the Defendants' assertion that he is not enrolled at Penn State we will assume that it is true for the purposes of this motion.

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Nevertheless, we doubt that Rogalski has demonstrated the existence of a "case or controversy" such that he may invoke the jurisdiction of this Court for the purpose of obtaining an order declaring 71 Pa. Cons. Stat. §646 unconstitutional. The United States Supreme Court in City of Los Angeles vs. Lyons, 103 S. Ct. 1660 (1983) declared that "[p]ast exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief...if unaccompanied by any continuing, present adverse effects." Id. at 1665 (quoting O'Shea vs. Littleton, 414 U.S. 488, 495-96 (1974)). The Court noted that past wrongs are evidence bearing on whether there is a real and immediate threat of repeated injury, but stated that the prospect of future injury rests upon the likelihood that the Plaintiff will again be arrested for and charged with violations of the criminal law and will again be subjected to criminal proceedings. Id.

Like the situation discussed in Lyons, Rogalski has failed to allege that he is likely to be interrogated by the Penn State campus police in the future. The mere fact that he may have suffered injury at the hands of the campus police in the past forms an insufficient basis for an order enjoining the enforcement of 71 Pa. Cons. Stat. §646 in the future.

The Defendants also raise the issue of mootness in arguing that Rogalski has no basis to challenge the constitutionality of 71 Pa. Cons. Stat. §646. The

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Defendants' arguments on mootness are similar to those which they raise in challenging Rogalski's standing to pursue this claim. We find the reasons advanced by the Defendants to be persuasive. For the sake of argument, however, we will assume that Rogalski has both standing and a claim which has not been rendered moot by his graduation from Penn State.

The dispositive question on the constitutionality of 71 Pa. Cons. Stat. §646 is the level of judicial scrutiny to be applied to the statute. City of Dallas vs. Stanglin, 57 U.S.L.W. 4406, 4407 (U.S. Apr. 4, 1989). Unless laws create suspect classifications or impinge upon constitutionally protected rights, they need only

bear some rational relationship to a legitimate state purpose. Id. Rogalski claims in his complaint that there is a fundamental constitutional right which requires that campus police be responsible to the locally elected officials of the people in the community. (Complaint, ¶39). Alternatively, Rogalski claims that the Penn State campus police are entitled to prosecute students for disciplinary violations selectively. (Complaint ¶52(2)). We construe Rogalski's selective prosecution claim to be that the practices of the Penn State campus police deny students the equal protection of the laws.

There are four basic fundamental constitutional rights that have been recognized by the courts and which trigger a strict scrutiny analysis. See L. Tribe, American Constitutional Law, 1454-65 (1988) (discussing fundamental

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constitutional rights). Those fundamental rights include the right of interstate travel, see Shapiro vs. Thompson, 394 U.S. 618, 627-29 (1969) (waiting period to obtain welfare benefits), voting, see Harper vs. Virginia Board of Elections, 383 U.S. 663, 665 (1966) (invalidating state poll tax), intimate personal choices, see Loving vs. Virginia, 388 U.S. 1. 12-13 (1967) (prohibition against interracial marriages); Skinner vs. Oklahoma, 316 U.S. 535, 541 (1942) (procreation), and the right of access to meaningful adjudication, see Boddie vs. Connecticut, 401 U.S. 371, 375-76 (1971) (a judicial decree of divorce may not be conditioned upon the claimant's ability to pay court fees and costs). Noticeably absent from this list is any mention of a fundamental right to have police be responsible to locally elected officials. Accordingly, we conclude that we must uphold 71 Pa. Cons. Stat. §646 as constitutional as long as it bears some rational relationship to a legitimate state purpose. In our view, a legitimate basis for the statute is to ease the burden on local law enforcement agencies which they would otherwise have to bear as a result of the presence of a large university in the midst of their community. The provision of campus police to help shoulder this burden is a reasonable means to solve the problem.

Rogalski's second constitutional challenge is that 71 Pa. Cons. Stat. §646 is unconstitutional because it denies students

the equal protection of the laws. When a court is confronted with a claim of discriminatory treatment in

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violation of the equal protection clause, its review varies according to the group discriminated against and the right or interest infringed upon. Price vs. Cohen, 715 F.2d 87, 92 (3d Cir. 1983). When a government or its agency adopts racial classifications, for example, a court is obliged to subject those classifications to strict scrutiny and uphold them only if they are necessary to achieve an important governmental objective. Id. Statutory classifications based upon gender generally receive an intermediate level of review which requires the government to show a substantial relationship between the law and a compelling governmental interest. See Mississippi University for Women vs. Hogan, 458 U.S. 718 (1982) (applying intermediate scrutiny to classification based on gender); cf. Mills vs. Habluetzel, 456 U.S. 91, 99 (1982) (applying intermediate scrutiny to classification based on illegitimacy). When a statute is based upon neither a suspect classification, such as race, nor a quasi-suspect classification, such as gender, the courts apply rationality review to test the statute's constitutionality. University students are neither a suspect classification nor a quasi-suspect classification and, therefore, we need only invalidate the law if it is not rationally related to a legitimate governmental purpose. Once again we conclude that 71 Pa. Cons. Stat. §646 is rationally related to a legitimate governmental purpose. Accordingly, 71 Pa. Cons. Stat. §646 is constitutional.

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In paragraphs 51 and 52(6) of his complaint, Rogalski advances a second equal protection claim by which he asserts that Penn State has a policy of patronizing female students at the expense of male students. The "policy" alleged by Rogalski in paragraphs 51 and 52(6) is discussed more fully in paragraphs 43 and 44 and appears to be no more than an abstraction based upon his own experience. In paragraph 44, for example, he claims that "...female students are patronized to the extent that they are not required to commit to writing,

signing or affirming such allegations and female students may claim 'sexual harrassment' [*sic Editor*] if they take offense at posters placed in public places open to all university students, on which their name does not appear." This narrative describes the facts of Rogalski's case. A single incident, however, does not create a policy. City of Oklahoma vs. Tuttle, 105 S. Ct. 2427, 2436 (1985). Therefore, Rogalski has failed to state a claim that shows a policy of discrimination by the campus police, or any other Defendants.

Our next inquiry is whether the campus police officers committed any violations of Rogalski's constitutional rights because if they did not, then no claim may follow against the other defendants for improper supervision. With regard to Rogalski's claim that his fourth amendment rights were violated, we note that the fourth amendment is not a guarantee against all searches and seizures, but only against unreasonable searches and seizures. United States

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vs. Sharpe, 105 S. Ct. 1568, 1573 (1985). A seizure is equivalent to an arrest and the same constitutional protections apply to both seizures and arrests. United States vs. Watson, 423 U.S. 411, 428 (1975) (Powell, J., concurring). The threshhold question, therefore, is whether or not Rogalski was arrested or seized by the Penn State Campus Police. The Pennsylvania Supreme Court has defined an arrest as "...any act that indicates an intention to take an individual into custody and that subjects him to the actual control and will of the person making the arrest." Commonwealth vs. Richards, 458 Pa. 455, 459, 327 A.2d 63, 65 (1974). Accepting Rogalski's allegations as true, it is clear that he was not in custody and that his freedom to depart was not restricted in any way. He went to the campus police station voluntarily and was immediately informed that he was not under arrest. (Rogalski Deposition at 45). He left the police station after a 20-minute interview. On the basis of these facts we conclude that Rogalski was neither arrested nor seized for fourth amendment purposes. The mere fact that Officer Weaver may have threatened to take Rogalski in front of a magistrate or that he was verbally abusive to him does not alter the outcome. See Rodgers vs. Lin-

coln Towing Service, Inc., 771 F.2d 194, 200 (7th Cir. 1985) (vandalism suspect who voluntarily went to the station house where he was threatened with an arrest warrant, but not physically confronted by the officer, was not seized for fourth amendment purposes). Moreover, under the facts as

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stated by Rogalski we doubt that he was even subjected to a custodial interrogation such that he was entitled to receive Miranda warnings. See Oregon vs. Mathiason, 429 U.S. 492, 494-95 (1976) (a half hour interview at the police station which the defendant voluntarily attended was not a "custodial interrogation" to which Miranda applies). Based upon the foregoing, we conclude that Rogalski's fourth amendment rights were not violated.

In the alternative, we note that had the campus police officers elected to arrest Rogalski, they may very well have had probable cause to do so. Based upon Rogalski's letters to Lindgren, and Lindgren's complaint to, the campus police, it was reasonable for the campus police officers to conclude that Rogalski was harassing her. In our view, no reasonable jury could conclude otherwise.

Similarly, Rogalski's claim that his fifth amendment rights were violated must also fail. He stated in his deposition that when Officer Weaver threatened to take him before a magistrate, he believes that his claim of false imprisonment occurred. (Rogalski Deposition at 62). Rogalski concedes, however, that he never asked Officer Weaver to stop the questioning, nor did he ever ask for permission to leave. Rogalski was not seized, arrested, or in custody for fourth amendment purposes, and the fact that he did not make any attempt to leave the interrogation room means that he was not falsely imprisoned for fifth amendment purposes.

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In addition to Rogalski's fourth and fifth amendment claims, he also claims that the campus police officers interfered with his right to privacy and committed an assault upon him. Rogalski predicates his claim of invasion of privacy upon the questions by Officer Weaver concerning his rela-

tionship with Laurie Lindgren. Rogalski was accused of harassing Laurie Lindgren and, therefore, the nature of Rogalski's relationship with Lindgren was a natural source of inquiry. The campus police officers had a legitimate interest in questioning Rogalski because he was suspected of committing a crime and that interest outweighed any invasion of Rogalski's privacy which may have occurred. Ramie vs. City of Hedwig Village, Texas, 765 F.2d 490, 492-93 (5th Cir. 1985).

With respect to Rogalski's claim of assault, he concedes that Officer Weaver never hit him, never touched him in any way, and never even got out of his chair during the entire 20 minute interview. (Rogalski Deposition at 56). Apparently Rogalski bases his entire claim of assault upon his allegation that Officer Weaver was abusive towards him. Mere words or threats, however, do not amount to an actionable assault under §1983. Johnson vs. Glick, 481 F.2d 1028, 1033 n.7 (2d Cir.), cert. denied, 414 U.S. 1033 (1973); Simms vs. Reiner, 419 F. Supp. 468, 474 (N.D. Ill. 1976). Therefore, Rogalski's claim of assault must also fail.

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Next, we will consider Rogalski's claim that various Defendants are liable for negligent supervision of the Pennsylvania State University campus police. The United States Supreme Court held in Monell vs. New York City Department of Social Services, 436 U.S. 658 (1977), that supervisory personnel cannot be held responsible for the actions of employees in a §1983 action on a theory of respondeat superior unless the supervisors are responsible for some official policy that causes an employee to violate another's constitutional rights. Id. at 692. Moreover, proof of a single unconstitutional act is not sufficient to impose liability under Monell unless the Plaintiff also proves that the incident was caused by an existing unconstitutional policy that can be attributed to the policymaker. City of Oklahoma vs. Tuttle, 105 S. Ct. 2427, 2436 (1985). In the case before us, we have concluded that the campus police officers did not violate Rogalski's constitutional rights. Therefore, Rogalski's claim of negligent supervision must also fail.

Rogalski has also put forth claims based upon the letter he received from Dr. Donald Suit which notified him of the University's intention to take disciplinary action against him. Rogalski seems to allege that the letter from Dr. Suit constitutes libel and selective prosecution of disciplinary charges. (Rogalski Complaint, ¶¶134-37). Rogalski also claims that the Penn State student handbook is vague,
provides no ascertainable standards of conduct, does

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not set forth penalties, and does not provide rules of procedure for a hearing. (Complaint, ¶52(5)). We construe Rogalski's "libel" claim to state a cause of action under the fourteenth amendment for a violation of his right to liberty. We will construe Rogalski's claim of "selective prosecution of disciplinary charges," as well as his claim that there are no rules of procedure for hearings, as stating claims for the violation of his right to procedural due process under the fourteenth amendment. We will address these issues in turn.

In order successfully to demonstrate a deprivation of liberty which would entitle him to damages under section 1983, Rogalski must show that the letter was defamatory, published, and that it caused him some injury. Cooley vs. Pennsylvania Housing Finance Agency, 830 F.2d 469, 473-74 (3d Cir. 1987). In Cooley, the District Court concluded that a termination letter from Cooley's employer, which was placed in his personnel file, was probably defamatory. Id. at 473. The United States Court of Appeals for the Third Circuit stated that summary judgment against Cooley was appropriate because he failed to show that the letter was published or that it was made available to potential future employers who might have requested it. Id. at 474. The Court held that the mere existence of the termination letter, without more, failed to support a cause of action for a violation of Cooley's liberty interest.

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We conclude that Rogalski's claimed violation of his liberty interest must fail for three reasons. First, the letter from Dr. Suit to Rogalski informing him that he had been charged

with harassing another student appears to be a truthful statement of the facts as they were then known to Dr. Suit. Rogalski's letters to Lindgren, together with her complaint, would seem to be prima facie evidence of harassment. Second, Rogalski has failed to demonstrate that the letter was made public. The mere fact that Rogalski has a copy of the letter, and that the letter may have been placed in his student file, is insufficient to establish publication. Finally, Rogalski concedes that he suffered no injury from the letter and admits that he does not even know if the letter was followed up with any disciplinary action by the University. (Rogalski Deposition at 70-71).

Next, we will consider Rogalski's claim that his right to procedural due process was violated. This claim is twofold in that Rogalski contends that he had no opportunity for a hearing on the disciplinary charges and that the Penn State student handbook does not set forth procedures to govern such hearings. We will construe these two claims as elements of the same cause of action because section 1983 requires a Plaintiff to show both injury in fact and causation. Valley Forge Christian College vs. Americans United, 454 U.S. 464, 472 (1982). Assuming the Penn State student handbook is in some way defective because it fails clearly to inform students of their rights at disciplinary

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hearings, such a defect in the student handbook presents merely a theoretical injury to Rogalski in the absence of an actual disciplinary proceeding. Therefore, if Rogalski's claim based upon the disciplinary proceedings against him fails, then he can have no independent claim based upon the student handbook alone.

The letter which Rogalski received notifying him of pending disciplinary action stated in pertinent part that:

> If you wish to contest the charges or sanctions, please see the enclosed "INSTRUCTIONS FOR RESPONSE." A failure to respond within ten business days after receipt of this letter shall be considered an admission of facts and the precedent sanction will be imposed. If you need addi-

> tional information regarding procedures for board hearings or appeals, please refer to Policies & Rules For Students which may be obtained at any university campus. You may also call the Office of Conduct Standards for Procedures or information regarding your case.

Rogalski states that he considered the letter to be a joke. (Rogalski Deposition at 135). He stated further that "...the whole letter didn't dignify a response." (Rogalski Deposition at 135). Rogalski states that he did respond to the letter, although he did not request any type of hearing, nor did he appeal the disciplinary process. (Rogalski Deposition at 136). Moreover, Rogalski states that he never checked his file at Penn State to see if there is a record of disciplinary action against him, but he states that he does not believe that there is any such record. (Rogalski Deposition at 70-71). Accordingly, Rogalski has suffered no actual injury as the result of any disciplinary proceedings which may have occurred. Therefore, he has no claim for

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damages under section 1983 for any violation of his right to procedural due process which may have occurred. Rogalski has also advanced numerous state law claims against the Defendants, including claims for libel, false imprisonment, and malicious prosecution. Based upon the foregoing discussion, however, we conclude that all of Rogalski's constitutional claims must fail and, therefore, we must also dismiss his pendent state law claims.

Conclusion.

Having construed all of Rogalski's claims in the light most favorable to him, we conclude that there are no genuine issues of material fact sufficient to warrant a trial on the merits in this case. Summary judgment in favor of all Defendants is appropriate.

/s/*Muir*
MUIR District Judge

DATED: May 10, 1989

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CHRISTOPHER A. ROGALSKI,	:	
Plaintiff	:	3: Cv-88-1730
vs.	:	Complaint Filed 7/11/88
PENNSYLVANIA STATE UNIVERSITY, et ai,	:	(Judge Muir)
Defendants	:	

FILED
Williamsport, PA
MAY 10, 1989
DONALD R. BERRY,
Clerk
PER.....bp.....
DEPUTY CLERK
[STAMPED UPPER, RIGHT HAND SIDE]

ORDER #1

1. The Defendants' motion for summary judgment is granted.

2. All of Christopher Rogalski's pendent state law claims are dismissed.

/s/Muir
MUIR, U.S. District Judge

DATED: May 10, 1989

MM:rw

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CHRISTOPHER A. ROGALSKI,	:	
Plaintiff	:	3: Cv-88-1730
vs.	:	Complaint Filed 7/11/88
PENNSYLVANIA STATE UNIVERSITY, et al,	:	(Judge Muir)
Defendants	:	*FILED* *Williamsport, PA* *MAY 10, 1989* *DONALD R. BERRY, Clerk* *PER.....bp.....* *DEPUTY CLERK* [STAMPED UPPER, RIGHT HAND SIDE]

ORDER #2 of
May 10, 1989

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On March 31, 1989, Christopher A. Rogalski filed a motion for partial summary judgment in the above-captioned case. On April 10, 1989, Rogalski filed a brief in support of his motion. On April 24, 1989, the Defendants filed their brief in opposition to Rogalski's motion. On May 8, 1989, Rogalski filed his reply brief. On May 10, 1989, we issued an order granting summary judgment in favor of all Defendants. Accordingly, Rogalski's motion for partial summary judgment is now moot.

NOW, THEREFORE, IT IS ORDERED THAT:

Christopher A. Rogalski's motion for partial summary judgment filed with this Court on March 31, 1989, is denied.

/s/Muir
MUIR, U.S. District Judge

MM:rw

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY
PENNSYLVANIA

CRIMINAL DIVISION

No. CR-8708-89

COMMONWEALTH OF PENNSYLVANIA

vs.

CHRISTOPHER ROGALSKI

Media, PA, March 15, 1991

***

Courtroom Number 4

***

TRANSCRIPT OF PROCEEDINGS

BEFORE:THE HONORABLE ANTHONY R. SEMERARO

[Not identified]
For the Commonwealth

PATRICK EGAN, ESQUIRE
For the Defendant

INDEX

	DIRECT	CROSS	REDIRECT	RECROSS
ON BEHALF OF THE COMMONWEALTH:				
[None]				
ON BEHALF OF THE DEFENDANT:				
[None]				

\- EXHIBITS

	MARKED	ADMITTED
ON BEHALF OF THE COMMONWEALTH:		
[None]		
ON BEHALF OF THE DEFENDANT:		
[None]		

[*END PAGE 2*]

PROCEEDINGS

March 15, 1991

THE COURT:

What is the next one please?

DISTRICT ATTORNEY:

The next matter is the matter of Christopher Rogalski. This is on your list at number 59. He is present in Court along with his attorney, Mr. Patrick Egan.

MR. EGAN:

Good morning, Your Honor.
THE COURT:
Good morning.
MR. EGAN:
For the record, Patrick Egan representing the Defendant, Christopher Rogalski.
THE COURT:
Please.
DISTRICT ATTORNEY:
Your Honor, I believe that there is going to be a request by the Defendant, and I believe that he has spoken to his attorney, and his attorney has an application he would like to put on the record regarding that request.
MR. EGAN:

[*END PAGE 3*]

It is my understanding that the Commonwealth is going to move
THE COURT:
Why don't we do that first?
DISTRICT ATTORNEY:
Yes, Your Honor. The Commonwealth will move to nolle prosequi Informations A and B. We will proceed with Information C, harassment, a summary offense.
MR. EGAN:
For the record, Your Honor, my client would like to object to that.
THE COURT:
Thank you. The record is so noted. The application is denied. The Commonwealth may withdraw A and B. What is this now, this is summary, so it is a non jury trial, it is for me to decide.
MR. EGAN:

That's correct, Your Honor. We would enter an open no contest plea to the summary.

THE COURT:

There is just one summary is that right?

DISTRICT ATTORNEY:

That is correct.

[*END PAGE 4*]

THE COURT:

I have down here C, harassment. Is that right?

DISTRICT ATTORNEY:

That is correct, Your Honor.

THE COURT:

Harassment as a summary, no contest. All right. Do you understand the plea that your attorney has negotiated in your behalf, Christopher?

MR. ROGALSKI:

Yes, Your Honor.

THE COURT:

Thank you. Swear the witness.

***

[Witness sworn]

***

THE COURT:

Is there anything else the Commonwealth is requesting in the circumstance of this nolo?

DISTRICT ATTORNEY:

Yes, Your Honor. With request to the sentencing in this matter the Commonwealth is going to be requesting that he be given a 90 day probationary sentence. That during that

[*END PAGE 5*]

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time he be required to get a psychiatric evaluation done at his own expense. There is a request by the victim in this case who is Laurie Ann Lindgren, a request for restitution for her psychological counseling in the amount of $2,668.55. There will be a request that he stay away from the victim, her place of employment, her place of residence, her family and her person. That there be no contact whatsoever verbally, by letter, by telephone with the victim or her family.

THE COURT:

What is the person's name again?

DISTRICT ATTORNEY:

The victim is Laurie Ann Lindgren, L-i-n-d-g-r-e-n.

THE COURT:

And this request includes her family?

DISTRICT ATTORNEY:

Yes, Your Honor. -

THE COURT:

All right, I understand. Would you state for the record the factual basis for the offer of plea?

[*END PAGE 6*]

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DISTRICT ATTORNEY:

Yes, Your Honor. The factual basis in this case would show that on or about December 12, 1989 this individual began to contact the victim by letter and by telephone and proceeded thereafter on various and numerous occasions throughout the year 1990 -- I'm sorry 1987 and 1988. At some point in time,

he has stopped harassing her, writing her letters, et cetera. Then he began again at some point in time while she was still a student at Penn State. She then graduated and moved home to Radnor Township, and during that time she started again to receive numerous letters and telephone calls from Mr. Rogalski, some of which were designed to make her annoyed, alarmed and inconvenienced by these letters and phone calls. There will be numerous exhibits at the time of trial both as to the letters and the phone calls. This conduct continued for approximately two and a half years while she was at Penn State and while she was at home in Radnor for approximately another year. That would be the Commonwealth's case.

THE COURT:
All right. Is there anything further?
DISTRICT ATTORNEY:
No, Your Honor.
THE COURT:
All right. Sentencing under 8708 C of 1989 is that you pay the cost of prosecution, and you serve a period of 90-day probation. That probation will be complete when you have demonstrated that you have, at your own expense, had a psychological evaluation and a copy of that has been sent to me and to the Commonwealth. There is no fine. Restitution is in the amount of $2,668 to the victim here. This sentence is specifically conditioned on your having no contact with the victim, and/or her family at any time,

and by any means, and at any place.
Christopher, do you understand this sentence
under 8708 C of 19891)
MR. ROGALSKI:
Yes, Your Honor.
THE COURT:
Thank you. That is the sentence you have to
comply with. Since this is a summary offense

there is no post verdict rights.
MR. EGAN:
Thank you, Your Honor.
THE COURT:
Okay, good luck to you, Christopher.

[End of Proceeding]
pah/MF-S

CERTIFICATE

I, Francis J. Dujmic, hereby certify that the proceedings and evidence are contained fully and accurately on multitrack reel-to-reel tape; that the tape was reduced to typewriting by my direction; and that this is a correct transcript of the same.

_____
Francis J. Dujmic, Administrator
Court Reporters

YORK STENOGRAPHIC SERVICES, INC., hereby certifies that the attached pages represent an accurate transcript

of the electronic sound recording of the proceedings in the Court of Common Pleas of Delaware County, Pennsylvania, in the matter of:

COMMONWEALTH OF PENNSYLVANIA

VS.

CHRISTOPHER ROGALSKI

#8708-89

BY:

/s/ Patricia A. Higgins
Patricia A. Higgins
Transcriber for
York Stenographic Services, Inc.

The foregoing record of the proceedings upon the hearing of the above cause is hereby approved and directed to be filed.

_____
Judge

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY
PENNSYLVANIA

CRIMINAL DIVISION

No. 8708-89

COMMONWEALTH OF PENNSYLVANIA

vs.

CHRISTOPHER ROGALSKI

Media, PA, August 17, 1992

***

Courtroom Number 3

***

TRANSCRIPT OF PROCEEDINGS

BEFORE: THE HONORABLE JOSEPH F. BATTLE

HEATHER MATTES, ESQUIRE
For the Commonwealth

ESQUIRE
For the Defendant

York Stenographic Services, Inc.
34 North George St., York, PA 17401 - (717) 854-0077

[*END PAGE 1*]

INDEX

DIRECT CROSS REDIRECT RECROSS
ON BEHALF OF THE COMMONWEALTH:

[None]
ON BEHALF OF THE DEFENDANT:
[None]
EXHIBITS
MARKED ADMITTED
ON BEHALF OF THE COMMONWEALTH:

[None]
ON BEHALF OF THE DEFENDANT:

[None]

York Stenographic Services, Inc.
34 North George St., York, PA 17401 - (717) 854-0077

[*END PAGE 2*]

PROCEEDINGS

August 17, 1992

MS. MATTES:

Christopher Rogalski. Christopher Rogalski? Your Honor, case #44 on the Court's list is Commonwealth versus Christopher Rogalski, at term number 8708, of 1989. Mr. McGee is here from Adult Probation and Parole, and can outline for the Court the efforts that he has made to contact the Defendant, the Defendant not having presented himself either to Adult Probation and Parole or to this Court in order to face the Gagnon II hearing. The Commonwealth would be requesting that a Bench Warrant be issued for him.

THE COURT:

All right, the Court will issue a Bench

Warrant, case 44, Christopher Rogalski.

MS. STEPHANIDE:
There's no answer to that call, Your Honor.
THE COURT:
All right.
THE COURT:
Just for the record, Mr. McGee, what efforts

did you make to contact the Defendant?
MR. MCGEE:
Your Honor, I sent him a letter, and spoke with his parents in my office on August 3. He did not appear. I spoke to his parents again...
THE COURT:
Where's he living?
MR. MCGEE:
He lives in Warrington, PA.
THE COURT:
Where?
MR. MCGEE:
Near Willow Grove.
THE COURT:
Okay. Okay.
MS. MATTES:
Thank you, sir.

[End of proceedings]
jah

CERTIFICATE

I, Francis J. Dujmic, hereby certify that the proceedings and evidence are contained fully and accurately on multitrack reel-to-reel tape; that the tape was reduced to typewriting by my direction; and that this is a correct transcript of the same.

_____

Francis J. Dujmic, Administrator
Court Reporters

YORK STENOGRAPHIC SERVICES, INC., hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings in the Court of Common Pleas of Delaware County, Pennsylvania, in the matter of:

COMMONWEALTH OF PENNSYLVANIA

VS.

CHRISTOPHER ROGALSKI

#8708-89

BY:

/s/ JoAnn E. Hoffman
JoAnn E. Hoffman
Transcriber for
York Stenographic Services, Inc.

The foregoing record of the proceedings upon the

hearing of the above cause is hereby approved and directed to be filed.

_____

Judge

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-4479

THE UNITED STATES DEPARTMENT OF EDUCATION
Ex Relatione CHRISTOPHER A. ROGALSKI,
Appellant

v.

HENRY P. JANSEN; RADNOR TOWNSHIP; ROY K. LINDGREN;
PATRICIA LINDGREN; LAURIE ANN LINDGREN; DAVID MAGEE; WILLIAM H. RYAN; HEATHER MATTES; JANE DOE

(D.C. Civ. No. 01-cv-03691)

SUR PETITION FOR REHEARING

Present: BECKER, Chief Judge,
SLOVITER, SCIRICA, NYGAARD, ALITO, ROTH,
McKEE, RENDELL, BARRY, AMBRO, FUENTES
and SMITH, Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for

rehearing, and a majority of the circuit judges of the circuit in regular service not having voted for rehearing, the
SMA CC TO: CR [hand written]
[*END PAGE 1*]

petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

Ax Sxxx [Signed-illegible]

Circuit Judge

Dated:
JAN 10 2003[stamped]

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 90-5175

CHRISTOPHER A. ROGALSKI
Appellant

VS.

PA. STATE UNIVERSITY, ET AL.

SUR PETITION FOR REHEARING

Present: SLOVITER, Chief Judge, BECKER, STAPLETON, MANSMANN, GREENBERG, HUTCHINSON, SCIRICA, COWEN, NYGAARD, ALITO, GARTH and HIGGINBOTHAM, Circuit Judges.

The petition for rehearing filed by appellant in the above entitled case having been submitted to the judges who participated in the decision of this court and to all other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in [sic] banc, the petition for rehearing is denied.

BY THE COURT,

/s/Carol Los Mansmann
Circuit Judge

FEB 26 1991 [STAMPED]

* Senior Judges Garth and Higginbotham voted only as to panel rehearing.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 90-5752

CHRISTOPHER A. ROGALSKI

v.

PENNSYLVANIA STATE UNIVERSITY
Honorble [sic] Malcom Muir,
Nominal Respondent

(D.C. Civil No. 88-01730)

ORDER SUR PETITION FOR REHEARING

Present: HIGGINBOTHAM, Chief Judge, and SLOVITER, BECKER, STAPLETON, MANSMANN, GREENBERG, HUTCHINSON, SCIRICA, COWEN, NYGAARD and ALITO, Circuit Judges.

The petition for rehearing filed by appellant in the above entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular service not having voted for rehearing, the
[*END PAGE 1*]

petition for rehearing by the panel and the Court in [sic] banc, is denied.

BY THE COURT,
/s/ *A. Leon Higginbotham*
Circuit Judge

Dated: *JAN 24 1991* [STAMPED]

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-4479

THE UNITED STATES DEPARTMENT OF EDUCATION
Ex Relatione CHRISTOPHER A. ROGALSKI,
Appellant

v.

HENRY P. JANSEN; RADNOR TOWNSHIP; ROY K. LINDGREN;
PATRICIA LINDGREN; LAURIE ANN LINDGREN; DAVID MAGEE; WILLIAM H. RYAN; HEATHER MATTES; JANE DOE

On Appeal From the United States District Court
For the Eastern District of Pennsylvania
(E.D. Pa. Civ. No. 01-cv-03691)
District Judge: Honorable Ronald L. Buckwalter

Submitted Under Third Circuit LAR 34. 1 (a)
November 26, 2002
BEFORE: SCIRICA, FUENTES and SMITH, Circuit Judges

JUDGMENT

This cause came on to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34. 1 (a). On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered December 7, 2001, be

and the same is hereby AFFIRMED. All of the above in accordance with the opinion of this Court.

ATTEST:
Marcia M. Waldron[signed]
Clerk

DATED: *DEC - 6 2002* [stamped]

[*END PAGE 1*]

Page 2

No. 01-4479

US Dept of Educ

Jansen, el al.

Certified as a true copy and issued in lieu of a formal mandate on January 21, 2003.
Teste: *Marcia M. Waldron* [signed]

Clerk, U.S. Court of Appeals for the Third Circuit.

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CHRISTOPHER A. ROGALSKI,	:	
	:	
Plaintiff	:	3: Cv-88-1730
vs.	:	Complaint Filed
7/11/88	:	
PENNSYLVANIA STATE	:	(Judge Muir)
UNIVERSITY, et al,	:	
Defendants	:	

FILED
JAN 31, 1990
DONALD R.BERRY,
Clerk
PER....bp.....
DEPUTY CLERK
[STAMPED UPPER, RIGHT HAND SIDE]

JUDGMENT

In accordance with the Opinion and Order of this Court dated May 10, 1989, and subsequent Order of this Court dated January 31, 1990, summary judgment be and hereby is entered in favor of the Defendants and against the Plaintiff.

DONALD R. BERRY,

CLERK

By /s/*Barbara Poust*
Deputy Clerk

Dated: January 31, 1990

AO 450 (Rev. 5/85) Judgment in a Civil Case

United States District Court
MIDDLE DISTRICT OF PENNSYLVANIA

CHRISTOPHER A. ROGALSKI

JUDGMENT IN A CIVIL CASE

V.

PENNSYLVANIA STATE UNIVERSITY, et al CASE NUMBER: 3:CV-88-1730

[ ] **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

[x] **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that judgment is hereby entered against the Plaintiff Christopher A. Rogalski and in favor of the Defendants Pennsylvania State University, et al., in the amount of $7,639.51 for attorney's fees and costs incurred in the case through September 21, 1989.

FILED
Williamsport, PA
NOV 21, 1989
DONALD R. BERRY, Clerk
PER.....sl.....
DEPUTY CLERK
[STAMPED LOWER, LEFT HAND SIDE]

November 21, 1989 — Date

DONALD R. BERRY — Clerk

/S/Sylvia J. Lehotsky

(By) Deputy Clerk

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

I. UNITED STATES STATUTES

20 U.S.C. Section 1091a. Statute of limitations, and State court judgments

(a) In general

(1) It is the purpose of this subsection to ensure that obligations to repay loans and grant overpayments are enforced without regard to any Federal or State statutory, regulatory, or administrative limitation on the period within which debts may be enforced.

(2) Notwithstanding any other provision of statute, regulation, or administrative limitation, no limitation shall terminate the period within which suit may be filed, a judgment may be enforced, or an offset, garnishment, or other action initiated or taken by -

(A) an institution that receives funds under this subchapter and part C of subchapter I of chapter 34 of title 42 that is seeking to collect a refund due from a student on a grant made, or work assistance awarded, under this subchapter and part C of subchapter I of chapter 34 of title 42;

(B) a guaranty agency that has an agreement with the Secretary under section 1078(c) of this title that is seeking the repayment of the amount due from a borrower on a loan made under part B of this subchapter after such guaranty agency reimburses the previous holder of the loan for its loss on account of the default of the borrower;

(C) an institution that has an agreement with the Secretary pursuant to section 1087c or 1087cc(a) of this title that is seeking the repayment of the amount due from a borrower on a loan made under part C or D of this subchapter after the default of the borrower on such loan; or

(D) the Secretary, the Attorney General, or the administrative head of another Federal agency, as the case may be, for payment of a refund due from a student on a grant made under this subchapter and part C of subchapter I of chapter 34 of title 42, or for the repayment of the amount due from a borrower on a loan made under this subchapter and part C of subchapter I of chapter 34 of title 42 that has been assigned to the Secretary under this subchapter and part C of subchapter I of chapter 34 of title 42.

(b) Assessment of costs and other charges

Notwithstanding any provision of State law to the contrary -

(1) a borrower who has defaulted on a loan made under this subchapter and part C of subchapter I of chapter 34 of title 42 shall be required to pay, in addition to other charges specified in this subchapter and part C of subchapter I of chapter 34 of title 42 reasonable collection costs; and

(2) in collecting any obligation arising from a loan made under part B of this subchapter, a guaranty agency or the Secretary shall not be subject to a defense raised by any borrower based on a claim of infancy.

(c) State court judgments

A judgment of a State court for the recovery of money provided as grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 that has been assigned or transferred to the Secretary under this subchapter and part C of subchapter I of chapter 34 of title 42 may be registered in any district court of the United States by filing a certified copy of the judgment and a copy of the assignment or transfer. A judgment so registered shall have the same force and effect, and may be enforced in the same manner, as a judgment of the district court of the district in which the judgment is registered.

28 U.S.C. Sec. 1651. Writs

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.
(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

31 USC Sec. 3730. Civil actions for false claims

(a) Responsibilities of the Attorney General. - The Attorney General diligently shall investigate a violation under section 3729. If the Attorney General finds that a person has violated or is violating section 3729, the Attorney General may bring a civil action under this section against the person.

(b) Actions by Private Persons. - (1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.

(3) The Government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the com-

plaint is unsealed and served upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure.

(4) Before the expiration of the 60-day period or any extensions

obtained under paragraph (3), the Government shall -

(A) proceed with the action, in which case the action shall be conducted by the Government; or

(B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) When a person brings an action under this subsection, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.

(c) Rights of the Parties to Qui Tam Actions. - (1) If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).

(2)(A) The Government may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Government of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(B) The Government may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

42 U.S.C. Sec. 1988. Proceedings In Vindication Of Civil Rights

(a) Applicability of statutory and common law

The jurisdiction in civil and criminal matters conferred on the

district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

(b) Attorney's fees

In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 (20 U.S.C. 1681 et seq.), the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb et seq.), title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), or section 13981 of this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

(c) Expert fees

In awarding an attorney's fee under subsection (b) of this section in any action or proceeding to enforce a provision of section 1981 or 1981a of this title, the court, in its discretion, may include expert fees as part of the attorney's fee.

FEDERAL RULES OF APPELLATE PROCEDURE

Rule 4. Appeal as of Right—When Taken

(a) Appeal in a Civil Case.

(1) **Time for Filing a Notice of Appeal.**

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after the judgment or order appealed from is entered.

(B) When the United States or its officer or agency is a party, the notice of appeal may be filed by any party within 60 days after the judgment or order appealed from is entered.

(2) **Filing Before Entry of Judgment.** A notice of appeal filed after the court announces a decision or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry.

(3) **Multiple Appeals.** If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

(4) **Effect of a Motion on a Notice of Appeal.**

(A) If a party timely files in the district court any of the following motions under the Federal Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

(ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;

(iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;

(iv) to alter or amend the judgment under Rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed no later than 10 days (computed using Federal Rule of Civil Procedure 6(a)) after the judgment is entered.

(B) (i) If a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment altered or amended upon such a motion, must file a notice of appeal, or an amended notice of appeal—in compliance with Rule 3(c)—within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.—

(iii) No additional fee is required to file an amended notice.

(5) **Motion for Extension of Time.**

(A) The district court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

(ii) that party shows excusable neglect or good cause.

(B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be *ex parte* unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 10 days after the

date when the order granting the motion is entered, whichever is later.

(6) **Reopening the Time to File an Appeal.** The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the motion is filed within 180 days after the judgment or order is entered or within 7 days after the moving party receives notice of the entry, whichever is earlier;

(B) the court finds that the moving party was entitled to notice of the entry of the judgment or order sought to be appealed but did not receive the notice from the district court or any party within 21 days after entry; and

(C) the court finds that no party would be prejudiced.

(7) **Entry Defined.** A judgment or order is entered for purposes of this Rule 4(a) when it is entered in compliance with Rules 58 and 79(a) of the Federal Rules of Civil Procedure.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979; Nov. 18, 1988; Apr. 30,
1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 27, 1995,eff. Dec. 1, 1995; Apr. 24, 1998, eff. Dec. 1, 1998.)

FEDERAL RULES OF CIVIL PROCEDURE

Rule 12.
Defenses And Objections-When And How Presented-By Pleading Or Motion-Motion For Judgment On The Pleadings

(h) Waiver Or Preservation Of Certain Defenses.

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July 1, 1963; Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 17, 2000, eff. Dec. 1, 2000.)

Rule 58.
Entry Of Judgment

Subject to the provisions of Rule 54(b): (1) upon a general verdict of a jury, or upon a decision by the court that a party shall recover only a sum certain or costs or that all relief shall be denied, the clerk, unless the court otherwise orders, shall forthwith prepare, sign, and enter the judgment without awaiting any direction by the court; (2) upon a decision by the court granting other relief, or upon a special verdict or a general verdict accompanied by answers to interrogatories, the court shall promptly approve the form of the judgment, and the clerk shall thereupon enter it. Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and when entered as provided in Rule 79(a). Entry of the judgment shall not be delayed, nor the time for appeal extended, in order to tax costs or award fees, except that, when a timely motion for attorneys' fees is made under Rule 54(d)(2), the court, before a notice of appeal has been filed and has become effective, may order that the motion have the same effect under Rule 4(a)(4) of the Federal Rules of Appellate Procedure as a timely motion under Rule 59. Attorneys shall not submit forms of judgment except upon direction of the court, and these directions shall not be given as a matter of course.
(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July 1, 1963; Apr. 22, 1993, eff. Dec. 1, 1993.)

Rule 79.
Books And Records Kept By The Clerk And Entries Therein

(a) Civil Docket. The clerk shall keep a book known as "civil docket" of such form and style as may be prescribed by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States, and shall enter therein each civil action to which these rules are made applicable. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the folio of the docket whereon the first

entry of the action is made. All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be entered chronologically in the civil docket on the folio assigned to the action and shall be marked with its file number. These entries shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. The entry of an order or judgment shall show the date the entry is made. When in an action trial by jury has been properly demanded or ordered the clerk shall enter the word "jury" on the folio assigned to that action.

(b) Civil Judgments And Orders. The clerk shall keep, in such form and manner as the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States may prescribe, a correct copy of

every final judgment or appealable order, or order affecting title to or lien upon real or personal property, and any other order which the court may direct to be kept.

(c) Indices; Calendars. [OMITTED]...

(d) Other Books And Records Of The Clerk. The clerk shall also keep such other books and records as may be required from time to time by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949; Jan. 21, 1963, eff. July 1, 1963.)

II. COMMONWEALTH OF PENNSYLVANIA

CONSTITUTION
OF THE COMMONWEALTH OF PENNSYLVANIA

The Article V: The Judiciary
Section 10: Judicial Administration

(c) The Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts, justices of the peace and all officers serving process or enforcing orders, judgments or decrees of any court or justice of the peace, including the power to provide for assignment and reassignment of classes of actions or classes of appeals among the several courts as the needs of justice shall require, and for admission to the bar and to practice law, and the administration of all courts and supervision of all officers of the judicial branch, if such rules are consistent with this Constitution and neither abridge, enlarge nor modify the substantive rights of any litigant, nor affect the right of the General Assembly to determine the jurisdiction of any court or justice of the peace, nor suspend nor alter any statute of limitation or repose. All laws shall be suspended to the extent that they are inconsistent with rules prescribed under these provisions.

STATUTES

18 Pa. Section 1105. Sentence Of Imprisonment For Summary Offenses

A person who has been convicted of a summary offense may be sentenced to imprisonment for a term which shall be fixed by the court at not more than 90 days.

18 Pa. Section 1106. Restitution For Injuries To Person Or Property

(a) General Rule.-Upon conviction for any crime wherein property has been stolen, converted or otherwise unlawfully obtained, or its value substantially decreased as a direct result of the crime , **or wherein the victim suffered personal injury directly resulting from the crime**, the offender may be sentenced to make restitution addition to the punishment prescribed therefor. (Emphasis added)

(b) Condition Of Probation Or Parole.-Whenever restitution been ordered pursuant to subsection (a) and the offender has been placed on probation or parole, his compliance with such order may be made a condition of such probation or parole.

***

(h) Definitions.-As used In this section, the following words and phrases shall have the meanings given to them in this subsection:

***

"Personal Injury" Actual bodily harm, including pregnancy, directly resulting from the crime.

42 Pa. Section 9728. Collection of restitution, reparation, fees, costs, fines and penalties

(a) General rule,-All restitution, reparation, fees, costs, fines and penalties.shall be collectible in any manner provided by

law. However, such restitution, reparation, fees, costs, fines and penalties are part of a. criminal action or proceeding and shall not be deemed debts. A sentence, pretrial disposition order **or order entered under section 6352 (relating to disposition of delinquent child)** for restitution, reparation, fees, costs, fines or penalties shall, together with interest and any additional costs that may accrue, be a judgment in favor of the probation department upon the person or the property of the person sentenced or subject to the order.

(b) Procedure.-The, ~~**PROBATION DEPARTMENT OR OTHER APPROPRIATE GOVERNMENTAL AGENCY**~~ **county clerk of courts** shall, upon sentencing, ~~**OR**~~ pretrial disposition **or other order**, transmit to the prothonotary of the respective county certified copies of all judgments for restitution, reparation, fees, costs, fines and penalties **which, in the aggregate, exceed $1,000**, and it shall be the duty of each prothonotary to enter and docket the same of record in his office and to index the same as judgments are indexed, without requiring the payment of costs as a condition precedent to the, entry thereof. **The clerk of courts, in consultation with other appropriate, governmental agencies, may transmit to the, prothonotary of the respective county certified copies of all judgments for restitution, reparation, fees, costs, fines and penalties which, in the aggregate, do not exceed $ 1,000, and, if so transmitted, it shall be the duty of each prothonotary to enter and docket the same of record in his office and to index the same as Judgments are indexed, without requiring the payment of costs as a condition precedent to the entry thereof**. The total amount for which the person is liable pursuant to this section may be entered as a judgment upon the person or the, property of the person sentenced **or ordered**, regardless of whether the amount has been ordered to be paid in installments.

(c) Period of time.-Notwithstanding section 6353 (relating to limitation on and change in place of commitment) or 18 Pa.C-S§ 1106(c)(2) (relating to restitution for injuries to person or

property), the period of time during which such judgments shall have effect may exceed the maximum term of imprisonment to which the offender could have been sentenced for the crimes of which he was convicted **or the maximum term of confinement to which the offender was committed.**

(d) Priority-Notwithstanding any other statutory provisions this or any other title, any lien obtained under this section shall maintain its priority indefinitely and no writ of revival need be filed-

***

(g) Costs,etc-Any sheriff's costs, filing fees and costs of,the county probation department, **clerk of courts** or other appropriate governmental agency; shall be borne by,. the defendant and shall be collected by the county probation, department, or other appropriate governmental agency, along with the total amount of the judgment and remitted to the appropriate agencies at the time of or prior satisfaction of judgment.

(h) Effect on contempt proceedings.-This section shall not affect contempt proceedings mandated by 18 Pa.C.S. §, 1106(f).

1990, Dec. 17, PL. 726 No., 181, § 1 effective in 60 days. Amended,1995. May 3, P.L. 999, No. 12 (Spec. Sess No, 1), § 3, effective in 60 days; 1995. May 12, P.L.' 1006, No. 13 (Spec. Sess. No. 1), § 1, effective in 60 days; 1996, Feb. 7, P.L. 7, No~ 3, § 2 effective in 60 days.

Historical and Statutory Notes

Act 1995 May 3, No. 12 (Spec. Sess. No. 1), in subsec. (a), third sentence, inserted the reference to an order entered under section 6352; in subsec. (b), first sentence following "pretrial disposition", inserted "or other order" and, in the second sentence following. "person sentenced", inserted "or ordered"; in subsec. (c), inserted the reference to section 6353 and, at the end, added."or the maximum term of confinement to which

the offender was committed" ; and, in subsecs. (e) and (f), inserted references, to petitions alleging delinquency.

Act 1995, No. 13 (Spec. Sess. No. 1) made the same exact amendments as Act 1095,'No. 12 (Spec. Sess. No. 1).

The 1996 amendment, in subsec. (b), in the first sentence, substituted "clerk of courts" for "probation department or other appropriate governmental, agency", and inserted "which, in the aggregate exceed $1,000" following "fines and penalties", and added. the second sentence; and, in subsec. (g), inserted ",-clerk of Courts".

42 Pa Section 9754. Order Of Probation

(a) General Rule.-In imposing an order of probation the court shall specify at the time of sentencing the length of, any term during which the defendant is to be supervised, which term may not exceed the maximum term for which the defendant could be confined, and the authority that shall conduct the supervision.

PENNSYLVANIA RULES OF CIVIL PROCEDURE

Rule 133
Rules Inconsistent With Laws

All laws shall be suspended to the extent that they are inconsistent with rules prescribed under the Constitution of 1968.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
RB
[STAMPED]
THE UNITED STATES DEPARTMENT OF EDUCATION

Ex Relatione

CHRISTOPHER A. ROGALSKI
503 Bradford Avenue
Warrington, PA 18976

01-CV-3691
[STAMPED]

Versus

HENRY P. JANSEN
301 Iven Avenue
Wayne, PA 19087

and

RADNOR TOWNSHIP,
Township Municipal Building,
301 Iven Avenue
Wayne, PA 19087

and

ROY K LINDGREN,
890 Westover Road
Newtown Square, PA 19073

and

PATRICIA LINDGREN
890 Westover Road
Newtown Square, PA 19073

and

LAURIE ANN LINDGREN,
890 Westover Road
Newtown Square, PA 19073

and

F. HARRY SPIESS,
130 W Lancaster Ave
PO Box 191
Wayne, Pennsylvania 19087-0191

and

DAVID MAGEE,

and

WILLIAM H. RYAN

and

HEATHER MATTES,

and

JANE DOE

COMPLAINT

I. STATEMENT OF JURISDICTION

1. This is an action for:
   A) Money damages for mail and wire fraud, violations of the RICO statutes, as well as the tortuous interference in a United States government contract for which the United States Department of Education has been defrauded out of in excess of $75,000 due to a fraudulent

claim of "emotional distress" allegedly incurred by Laurie Ann Lindgren.

B) Money damages for the violation of the relator's Constitutional rights and other rights granted by federal law, including the right of appeal, the right to higher education, and the right to repay his student loans.

C) Declaratory and injunctive relief to enjoin and prohibit further unlawful and unconstitutional acts by the defendants, and expunction of the relator's criminal arrest records.

2. This action is brought pursuant to 31 U.S.C. Sections 3729 and 3730; 18 U.S.C. Section 1001; 42 U.S.C. Sections 1983, 1985 and 1988; 28 U.S.C. Sections 2201 and 2202, 28 U.S.C. Title 20, Chapter 28, generally, and 20 U.S.C. sections 1011a and 1087gg, specifically, and Rule 57 of the Federal Rules of Civil Procedure: Rule 65 of the Federal Rules of Civil Procedure; The First, Third, Fourth, Fifth, Ninth, and Fourteenth Amendments to the United States Constitution.

3. Jurisdiction is founded upon 28 U.S.C. Sections 1331, 1343, 1345, and the aforementioned statutory and Constitutional provisions.

4. Venue is founded upon 28 U.S.C. Section 1391.

5. Trial by jury is demanded.

II. PARTIES

6. Plaintiff, The United States Department of Education is an agency lawfully enacted by the United States Congress as an agency of the United States of America.

7. Relator/Plaintiff, Christopher A. Rogalski, is a citizen of the United States, and is an individual who is presently a citizen of the United States, and resident of the County of Bucks in the Commonwealth of Pennsylvania, residing at 503 Bradford Avenue in Warrington Township.

8. Defendant, Radnor Township, is a municipal corporation located in Delaware County, Pennsylvania.

9. Defendant, Henry P. Jansen, was at all times material hereto a duly appointed and acting Radnor Township Police Lt. acting under color of state authority. He is sued individually and in his official capacity.
10. Defendants, Roy K. Lindgren, Patricia Lindgren and Laurie Ann Lindgren, are individuals maintaining an address at 890 Westover Road, Newtown Square, Pennsylvania, 19073.
11. Defendant, F. Harry Spiess, Jr., is a resident of Delaware County, Pennsylvania with an address at 130 W Lancaster Ave., Wayne, Pennsylvania 19087-0191
12. The Defendant, David Magee, is an individual residing in Delaware County, Pennsylvania. David Magee may or may not have been a Delaware County probation officer during the events in question.
13. Defendants, William H. Ryan and Heather Mattes, were at all times material hereto, duly appointed and acting District Attorney and Asst. District Attorney for the Commonwealth of Pennsylvania and acting under color of state authority.
14. Defendant, Jane Doe, is an individual who represented herself to be an Asst. District Attorney for the Commonwealth of Pennsylvania but was so ashamed of her behavior that she concealed her identity. It is believed and averred that she was in fact an attorney representing Roy K. Lindgren, Patricia Lindgren or Laurie Ann Lindgren.

III. COUNT 1

The United States Department of Education ex rel. Christopher A. Rogalski vs. Defendants

A. THE BOGUS BENCH WARRANT

15. On August 17, 1992 Heather Mattes appeared in courtroom number 3 of the Delaware County Courthouse and requested the issuance of a bench warrant for Christopher A. Rogalski for "not having presented himself either to Adult Probation and Parole or to this Court in order to face the Gagnon II hearing".
16. In fact, on August 17, 1992, Christopher A. Rogalski was not subject to any sentence of probation or parole, or the ju-

risdiction of the Delaware County Court of Common Pleas, any magistrate's court from Delaware County, or any Delaware County probation or parole department or officer.
17. In fact, on August 17, 1992, Christopher A. Rogalski had not been arrested or charged with any crime such that any possible probation or parole violation existed.
18. In fact, on or before August 17, 1992, Christopher A. Rogalski had not been granted, nor did he receive, a Gagnon I hearing pursuant to Gagnon v. Scarpelli, 411 U.S. 778 (1973) such that any Gagnon II hearing was legally possible or ripe for disposition.
19. No record exists in the Delaware County Court of Common Pleas as to why any such Gagnon I, Gagnon II or any other probation or parole hearing was scheduled on August 17, 1992.
20. It is believed and averred that the purpose of the so-called "Gagnon II" hearing on August 17, 1992 was an attempt to extort several thousand dollars for the alleged psychiatric or psychological fees of one Laurie Ann Lindgren. Neither Lindgren nor the Delaware County District Attorney's Office ever alleged that Lindgren ever suffered any physical injury inflicted by Christopher A. Rogalski, or anyone else.
21. Under Pennsylvania law, both civil or criminal law, damages for emotional distress are not recoverable for a person such as Lindgren who has never suffered any physical injury.
22. No written motion for any probation, parole, or Gagnon I or II hearing was filed with the court as required by the Pennsylvania Rules of Criminal Procedure 9020 by any member of the Delaware County District Attorney's Office, or any probation officer.
23. The Delaware County District Attorney's Office failed to notify counsel of record for Christopher A. Rogalski, Patrick Eagan, Esq., of any probation, parole, or Gagnon I or II hearing scheduled on August 17, 1992 as required by the Sixth and Fourteenth Amendments to the United States Constitution, the Pennsylvania Constitution and Rule 9023 of the Pennsylvania Rules of Criminal Procedure.

24. Despite the aforementioned gross violations of the United States and Pennsylvania Constitutional guarantees of due process of law and Pennsylvania procedural law, on August 17, 1992, Judge Joseph F. Battle issued a bench warrant for the arrest of Christopher A. Rogalski. After issuing the bench warrant, Judge Joseph F. Battle solicited unsworn statements from one David Magee regarding his alleged efforts to contact "the Defendant".

25. David Magee's unsworn response regarding his alleged efforts to contact "the Defendant" failed to include service of written notice by certified U.S. mail as required by then applicable Rule 75 of the Pennsylvania Rules of Criminal Procedure and instead consisted of false statements of a non-existent meeting with Christopher A. Rogalski's parents in his office on August 3, 1992 and alleged service by regular, non-certified, U.S. mail of a notice of the August 17, 1992 hearing.

26. David Magee is believed and averred to be the investigating and complaining "law enforcement officer" who requested the bench warrant hearing. David Magee knew that the statutory time for any kind of probation revocation authority had long since expired.

27. Alternatively, Heather Mattes acted as the investigating and complaining "law enforcement officer" who requested the bench warrant hearing. Heather Mattes knew that the statutory time for any kind of probation revocation authority had long since expired.

28. After securing the bench warrant for the arrest of Christopher A. Rogalski, the Delaware County District Attorney's Office has failed to make any efforts whatsoever to execute the warrant, including so much as posting the warrant in the Pennsylvania State Police central database, for now almost 9 years.

29. Despite the fact that no effort whatsoever was made to execute the August 17, 1992 bench warrant, Delaware County Officials have continued to inform callers, some of whom are potential employers, inquiring about Christopher A. Rogalski via telephone lines, subject to the Federal Communications

Commission regulation and in the stream of interstate commerce, that he is a "fugitive from justice".

30. Despite the fact that no effort whatsoever was made to execute the August 17, 1992 bench warrant, Delaware County Officials have continued to make available for posting on the internet, a medium made up of electronic and fiber optic wires and telephone lines subject to the Federal Communications Commission regulation and in the stream of interstate commerce, copies of Judge Battle's order declaring that Christopher A. Rogalski is a "fugitive from justice".

31. As a result to the public disclosure and promulgation of Judge Battle's order declaring that Christopher A. Rogalski is a "fugitive from justice", Christopher A. Rogalski's right to secure and obtain employment has been wrongfully prejudiced, resulting in his defaulting on his federally guaranteed student loans. As a result of Christopher A. Rogalski's default on his student loans, the U.S. Department of Education, as guarantor, has been required to repay the grantor of the loan and presently is owed an outstanding balance in excess of $75,000.

32. Sometime in 1995, the corrupt Delaware County District Attorney or his agents or subordinates, entered a judgment against Christopher A. Rogalski in the Delaware County Court of Common Pleas for the aforementioned illegal and fraudulent restitution, despite the fact that Christopher A. Rogalski does not live or own property in Delaware County and that the Court lacked any jurisdiction over either Christopher A. Rogalski, or the subject matter of the complaint.

B. THE BOGUS ARREST WARRANT

33. On December 11, 1989, Christopher A. Rogalski, was enrolled and matriculated at the Dickinson School of Law in Carlisle, Pennsylvania, as a third year law student preparing for final examinations for the fall semester.

34. Christopher A. Rogalski's education and tuition were financed and subsidized by grants from the Unites States Dept. of Education.

35. On December 11, 1989, one Henry P. Jansen of the Radnor Township Police Department executed an affidavit seeking an arrest warrant for Christopher A. Rogalski alleging the violation of three Pennsylvania, Criminal Statutes, to wit, 18 PA Purdon's §2709, harassment, §5503, Disorderly Conduct & §5504 Harassment by Communication or Address (as the offenses then existed) with regard to private, non-public, alleged communications between Christopher A. Rogalski and one Laurie Ann Lindgren.

36. The factual allegations contained in Jansen's affidavit specifically stated he was aware that Christopher A. Rogalski was a party to a federal lawsuit, *Rogalski v. The Pennsylvania State University,* Civil Docket No. 88-1730, U.S. District Court, Middle District of PA.

37. Despite the fact that the conduct Jansen complained of consisted of private communications between Christopher A. Rogalski and Laurie Ann Lindgren which Jansen alleged was criminal, Jansen never required Lindgren to swear out an affidavit to confirm her alleged state of mind, i.e. Jansen's affidavit alleges, "Laurie Lindgren lives in constant fear, depriving her of a normal existence as a case in point - not being able to attend the Homecoming event at Penn State University."

38. Since in Pennsylvania civil motions for "Protection from Abuse Orders" require affidavits from the purported victim in support such allegations, Due Process of law requires the same or higher legal standards for criminal actions alleging mere harassment.

39. Jansen's affidavit contradicts Lindgren's testimony in her deposition of February 27, 1989, *Rogalski v. The Pennsylvania State University,* Civil Docket No. 88-1730, U.S. District Court, Middle District of PA which was on file with that court and publicly available.

40. Jansen's affidavit cites Judge Muir's Opinion of May 10, 1989 in support of his contention that Christopher A. Rogalski violated certain state statutes, when in fact that opinion specifically refused to address state law issues based upon Muir's

finding of a lack of Federal jurisdiction such that the pendant state law claims could be addressed by the court.

41. Jansen's affidavit contains a virtual word for word summary of *ipse dixit* statements made by Judge Muir in his Opinion of May 10, 1989 erroneously attributed to Christopher A. Rogalski in his deposition which were in the process of being appealed in the federal courts, with the exception that Jansen attempted to now falsely attribute these same statements to Lindgren in an attempt to change her testimony.

42. Jansen's affidavit alleges that Laurie Ann Lindgren has harassed because she was subpoenaed to give testimony regarding *Rogalski v. The Pennsylvania State University et al.* and that the scheduling of that deposition date during her spring break, such that it wouldn't interfere with her studies, delayed her from traveling to Florida (to participate in drunken debauchery) during her "spring break", and was, therefore, harassing.

43. Jansen's affidavit wrongly alleges that Christopher A. Rogalski was responsible for having "refused to change" Laurie Ann Lindgren's federal deposition date, when in fact her attorney F. Harry Spiess, Jr., failed to schedule her deposition voluntarily when requested, and never bothered to move to change the deposition date with the presiding judge, U. S. District Judge Malcolm Muir.

44. Jansen's affidavit alleges that Laurie Ann Lindgren has harassed by letters sent through the U.S. Postal Service, from Christopher A. Rogalski, addressed to her personal attorney, F. Harry Spiess, Jr. in response to letters sent through the U.S. Postal Service, to Christopher A. Rogalski, from F. Harry Spiess, Jr.

45. Jansen alleged that Laurie Ann Lindgren was harassed by Christopher A. Rogalski making communications to Laurie Ann Lindgren in response to her long distance telephone calls to him via telephone lines, subject to the Federal Communications Commission regulation and in the stream of interstate commerce.

46. Uncontradicted affidavits regarding Laurie Ann Lindgren's long distance telephone calls to Christopher A.

Rogalski via telephone lines, subject to the Federal Communications Commission regulation and in the stream of interstate commerce, were on file and publicly available regarding *Rogalski v. The Pennsylvania State University,* Civil Docket No. 88-1730, U.S. District Court, Middle District of PA and were also at issue in an appeal to the U.S. Third Circuit Court of Appeals at the time Jansen swore out his "Affidavit of Probable Cause".

47. Uncontradicted affidavits regarding Laurie Ann Lindgren's other bizarre public conduct with regard to Christopher A. Rogalski, i.e. following him in public, were also on file in *Rogalski v. The Pennsylvania State University,* Civil Docket No. 88-1730, U.S. District Court, Middle District of PA and were also at issue in an appeal to the U.S. Third Circuit Court of Appeals at the time Jansen swore out his "Affidavit of Probable Cause".

48. At no point in Jansen's affidavit did he allege that Christopher A. Rogalski used profanity, obscenity or threatening language in his communications with Laurie Ann Lindgren.

49. At no point in Jansen's affidavit did he allege that Christopher A. Rogalski called Laurie Ann Lindgren at unreasonable or inconvenient, late night or early morning hours.

50. At no point in Jansen's affidavit did he allege that Laurie Ann Lindgren did not engage in the same or similar activities vis-à-vis Christopher A. Rogalski that Jansen alleged were harassing to Laurie Ann Lindgren.

51. Jansen's affidavit was the second time in less than two years and eight months that Laurie Ann Lindgren chose to wait until Christopher A. Rogalski was preparing for final examinations to cajole a law enforcement official to molest Christopher A. Rogalski for "harassment", without signing a sworn statement affirming the truth of her statements.

52. At the time Jansen executed his "Affidavit of Probable Cause", Christopher A. Rogalski was living in Carlisle Pennsylvania attending the Dickinson School of Law.

53. At the time Jansen executed his "Affidavit of Probable Cause", Laurie Ann Lindgren was living in Newtown Square, Pennsylvania.

54. Carlisle, Pennsylvania and Newtown Square, Pennsylvania are approximately 100 miles apart.
55. A reasonable person should have known that the allegations of "harassment" and cõnclusions "Laurie Lindgren lives in constant fear, depriving her of a normal existence..." stated in Jansen's affidavit are and were false.
56. After securing the warrant for the arrest of Christopher A. Rogalski from District Justice Beverly Foster, on December 12, 1989 Jansen called Christopher A. Rogalski via a long distance telephone line, subject to the Federal Communications Commission regulation and in the stream of interstate commerce, at his apartment in Carlisle, Pennsylvania, and without informing him that a warrant was issued for his arrest, demanded in an obnoxious tone of voice and manner of speech that Christopher A. Rogalski travel over a hundred miles to Radnor Township, Delaware County to speak with Jansen at once.
57. Christopher A. Rogalski responded to Jansen's ridiculous request to travel to Delaware County by informing Jansen that if he wished to discuss something, Jansen should do so over the telephone.
58. Jansen became angry at Christopher A. Rogalski's refusal to comply with his ridiculous request to travel over a hundred miles to Delaware County and angrily shouted over the telephone to Christopher A. Rogalski, "Don't you dare talk to Laurie Ann Lindgren! Don't you dare file that appeal."
59. After hanging the phone up on Christopher A. Rogalski, Jansen faxed a copy of the arrest warrant to the Carlisle Police Department for execution via a long distance telephone line subject to the Federal Communications Commission regulation and in the stream of interstate commerce.
60. At an arraignment hearing on the issue of bail before District Justice Paula Correal held in Carlisle, Pennsylvania, on December 12, 1989, Jansen telephoned D.J. Correal via a long distance telephone line, subject to the Federal Communications Commission regulation and in the stream of interstate commerce, and falsely informed her that Christopher A. Rogalski had refused to turn himself in to answer the warrant.

61. As a result of Jansen's telephone call to D.J. Correal, Correal refused to allow Christopher A. Rogalski to be released on his own recognizance and set bail at $2500, while requiring only $250 to be posted.
62. At all times material hereto, and in all his actions described herein, Defendant Henry P. Jansen was acting under color of his authority as a senior Radnor Township Police Officer.
63. As a senior Radnor Township Police Officer, Defendant Henry P. Jansen actions represent the policy and practice of Radnor Township. Radnor Township failed to adequately train, supervise and select its senior police officers and instead demonstrated indifference to their illegal activities.

C. F. HARRY SPIESS, JR., "I'VE COME TO COLLECT MY PENNIES": THE REFUSAL TO CONDUCT A PRELIMINARY, EVIDENTAIRY HEARING

64. On December 19, 1989 at 3:00 PM, a preliminary hearing was scheduled before District Justice Beverly Foster in Radnor Township, Delaware County, Pennsylvania.
65. At the scheduled December 19, 1989 preliminary hearing D. J. Foster refused to conduct the preliminary hearing as required by law. With a stenographer, paid for by Christopher A. Rogalski, in the room, Foster turned to the Lindgren family, smiled to them and said, "I'm sorry but he has to have an attorney."
66. Prior to postponing the December 19, 1989 preliminary hearing D. J. Foster made no attempt to engage Christopher A. Rogalski in a colloquy to determine if he wished to waive the right to counsel and, as a third year law student, cross examine the witnesses himself.
67. Applicable rules of Pennsylvania Criminal Procedure required Foster to conduct a preliminary hearing within 10 days of the December 12, 1989 arraignment, which Foster utterly refused to do.
68. When Christopher A. Rogalski attempted to leave the room following the postponement of December 19, 1989 preliminary hearing, one Roy K. Lindgren, the father of Laurie

Ann Lindgren, crossed the room and elbowed Christopher A. Rogalski in the ribs.

69. Jansen watched Roy K Lindgren throw his elbow at Christopher A. Rogalski after the postponement of December 19, 1989 preliminary hearing and did nothing to restrain the Lindgren family, or to protect Christopher A. Rogalski, nor did Jansen charge Roy K. Lindgren with assault or harassment.

70. Based upon the failure of failure D.J. Foster to maintain order and decorum in the courtroom and concerned for his physical well being, Christopher A. Rogalski hired two security agents to accompany him to the rescheduled January 23, 1990 preliminary hearing.

71. On January 23, 1990 at 12:15 P.M. one F. Harry Spiess, Esq., the Lindgren family's personal attorney, walked into the lobby/reception area of District Justice court No. 32-1-29 in Radnor Township, Delaware County, and announced to the receptionist, "I'm Harry Spiess. I've come to collect my pennies." Whereupon, Spiess proceeded to enter D.J. Foster's private chambers to meet with Foster *ex parte*.

72. At the time Spiess met with Foster *ex parte* in chambers, he was not only the Lindgren's family attorney but also, according to Jansen's arrest warrant, a material witness in the subject matter of the scheduled hearing.

73. Spiess remained in Foster's chambers throughout the scheduled hearing.

74. On January 23, 1990 at 12:30 P.M Foster again refused to conduct the preliminary hearing required by law due to the fact that Christopher A. Rogalski objected to signing a mocking and insulting document stating "that I can read and write the English Language" after participating in a colloquy with Foster and answering all of her questions on the record with a paid stenographer present.

75. On January 23, 1990, Foster refused to permit Christopher A. Rogalski to speak three complete sentences regarding his objections to her lengthy "waiver of counsel statement' before repeatedly threatening to revoke his bail for failing to sign the mocking document.

76. At no point in time did Foster attempt to determine for herself if Christopher A. Rogalski could in fact "read and right the English Language".
77. In fact, Foster refused to take judicial notice of a letter from President Judge John W. Keller of the 39th Judicial District of the Pennsylvania Court of Common Pleas, stating that Christopher A. Rogalski had served as his law clerk, and should have satisfied a reasonable person as to Foster's concerns as to whether or not Christopher A. Rogalski could in fact "read and write the English Language".
78. On January 23, 1990, Foster refused to conduct the preliminary hearing as required by law and stormed out of the courtroom to consult with Spiess in chambers.
79. On January 23, 1990, Foster refused to conduct the preliminary hearing as required by law, because she knew the allegations contained in the complaint were false, or at best only half true, and did not wish the falsity of the warrant she approved shown on the record with a stenographer present.
80. Despite the fact Christopher A. Rogalski had appeared at two separate scheduled preliminary hearings that Foster refused to conduct, and had to travel over a hundred miles from his Carlisle, PA residence, on January 23, 1990, Foster ordered Christopher A. Rogalski jailed and ordered an increase in the amount of his bail posted from $250 to $2500 without an opportunity to be heard or to present evidence on the issue of the increased bail.
81. On January 23, 1990, Foster informed Christopher A. Rogalski 's parent's, John T. Rogalski & Mary Ann Rogalski, who came to post the additional bail that Foster maliciously ordered, that, "If he shows up here again without a lawyer I'll make his bail so high he'll never get out."
82. At no point in time did Foster order Christopher A. Rogalski to retain counsel.
83. Foster violated both the Eighth Amendment to the United States Constitution, and Article I, Section 13 of Pennsylvania Constitution, which prohibits against requiring excessive bail.

84. The practice of increasing the bail as a *de facto* contempt power violates the right of a criminal defendant, who repeatedly appears for hearings, to due process of law.
85. Threatening a criminal defendant with increased bail and/or incarceration in not a legal method of securing an intelligent waiver of counsel, nor is it an acceptable method of dealing with an individual's objections to a document he is being forced to sign or depriving a criminal defendant of the fundamental right to be heard.
86. Christopher A. Rogalski had a Constitutional right guaranteed by the First Amendment to the United States Constitution as found by the United States Supreme Court to be heard at the preliminary hearing, or any hearing pertaining to bail, without retaining counsel.
87. Foster approved a false affidavit, issued a malicious warrant and refused to promptly conduct the required preliminary hearings due to the fact that the Lindgren family, or their lawyer, F. Harry Spiess, Jr. had contributed to her re-election campaigns directly, indirectly or both.
88. As a result of Foster's willful refusal to conduct the preliminary hearing promptly or in a lawful or orderly manner, Christopher A. Rogalski's rights were unfairly prejudiced, specifically, he was required to repeatedly travel to Radnor Township, Delaware County, Pennsylvania, he was unable to continue to afford a stenographer to record the proceedings, he was unable to confront his accusers, he was unable to have the charges dismissed, he was denied anything resembling a fair hearing in front of a neutral and detached magistrate, and he was unable to continue his legal education.
89. If Foster could not conduct herself in a professional manner, maintain decorum in the courtroom, or conduct herself as a neutral and detached magistrate, Foster had an obligation to recuse herself from the proceedings.

D. BAD FAITH CRIMINAL PROSECUTION

90. Corrupt Delaware County District Attorney, William H. Ryan, Jr., molested Christopher A. Rogalski for 15 months

with unnecessary Court appearances for two misdemeanor offenses he never had any intention of prosecuting.
91. During the this 15 month time period Corrupt Delaware County District Attorney, William H. Ryan, Jr., routinely made use of the United States Postal Service to mail notices to Christopher A. Rogalski, and/ or his attorney, Patrick J. Eagan, Esq.
92. Specifically on August 6, 1990, corrupt Delaware County District Attorney, William H. Ryan, Jr., mailed a letter through the United States Postal Service addressed to Patrick J. Eagan, Esq., and a carbon copy to Christopher A. Rogalski, offering placement in an "Advanced Rehabilitative Disposition Program" if Christopher A. Rogalski would agree to pay Laurie Ann Lindgren "restitution" for her non-existent psychiatric or psychological bills.
93. On March 15, 1991 an alleged assistant District Attorney, named above as Jane Doe, who was so ashamed of herself she refused to state her name on the record, withdrew the two misdemeanor charges over the objection of counsel leaving only one charge harassment, 18 PA Purdon's §§2709.
94. Following the shameful withdraw of the right to trial by jury, Christopher A. Rogalski was forced to change his plea to the one remaining summary charge of harassment to a plea of *nolo contendere* to preserve both his and the U. S. Dept. of Education's rights to have the facts of the case adjudicated by a jury.
95. On March 15, 1991 Judge Anthony R. Semeraro accepted Christopher A. Rogalski 's plea of *nolo contendere.*
96. In the record of the March 15, 1991 hearing, the Commonwealth of Pennsylvania made no objection to the acceptance of the *nolo contendere* plea.
97. In accepting the *nolo contendere* plea both Judge Semeraro and Jane Doe knew that such a plea admitted nothing to the civil side of the court in any claim whatsoever, and such a plea could not prejudice Christopher A. Rogalski 's rights on the civil side of the court in a way shape or form.
98. In her statement of alleged facts regarding the remaining harassment charge, Jane Doe failed to allege that Laurie Ann

Lindgren incurred any physical injury or property damage. Jane Doe neither investigated nor submitted any proof on the record in support of Laurie Ann Lindgren's request that Christopher A. Rogalski be ordered to pay "restitution" for Laurie Ann Lindgren's alleged psychiatric or psychological expenses.

99. In her statement of alleged facts regarding the remaining harassment charge, Jane Doe alleged that the sole basis of the criminal complaint against Christopher A. Rogalski was, "numerous letters and telephone calls from Mr. Rogalski, some of which were designed to make her annoyed, alarmed and inconvenienced by these letters and phone calls."

100. The allegations regarding Christopher A. Rogalski making repeated telephone calls to Laurie Ann Lindgren were additional charges not contained in the arrest warrant and were in fact false. Christopher A. Rogalski never once called Laurie Ann Lindgren on the telephone at her Radnor address.

101. In her statement of alleged facts regarding the remaining harassment charge, Jane Doe failed to allege that any letter, telephone call, or any other alleged communication from Christopher A. Rogalski contained language or content that was threatening, pornographic, libelous, or any other form of expression that was unlawful or not otherwise constitutionally protected by the First Amendment to the U.S. Constitution. Jane Doe merely alleged that the simply because communications were made that they "were designed to make her annoyed, alarmed and inconvenienced by these letters and phone calls."

102. In her statement of alleged facts regarding the remaining harassment charge, Jane Doe failed to allege that any letter, telephone call, or any other alleged communication from Christopher A. Rogalski originated from within Delaware County, such that subject matter jurisdiction existed to try Christopher A. Rogalski in Delaware County without a jury.

103. The Delaware County District Attorney's Office bore the burden of proving that subject matter jurisdiction was present in its malicious prosecution of Christopher A. Rogalski.

104. Under Pennsylvania statutory law, 18 PA Purdon's §5504 "Harassment by Communication" the Pennsylvania Legislature permits jurisdiction in both the county of origin as well as the county of receipt of prohibited communications. Conversely 18 PA Purdon's §2709 "Harassment" (as it then existed in 1990) pertained to public acts. The Pennsylvania Legislature did not grant subject matter jurisdiction in the county of receipt of a letter or telephone call. Nor did it grant subject matter jurisdiction under 18 PA Purdon's §2709 "Harassment" to try an act committed in another county.
105. No subject matter jurisdiction over alleged actions, i.e. mailing letters or making phone calls, which occurred in another county, was acquired by Delaware County for purposes of charging Christopher A. Rogalski with 18 PA Purdon's §2709 Harassment, the address of the alleged "victim" notwithstanding.
106. 18 PA Purdon's §2709 "Harassment" does not apply to communications from letter or telephone; it only applies to public conduct, not private communications.
107. 18 PA Purdon's §2709 "Harassment" is constitutionally vague and overbroad. Distinguished judges of the Pennsylvania Superior Court have found 18 PA Purdon's §2709 Harassment subject to misinterpretation, (See *Commonwealth v. Duncan* 363 A. 2d 803 at 808), and the issue has never been adjudicated by the Pennsylvania Supreme Court.
108. In her statement of alleged facts regarding the remaining harassment charge, Jane Doe contradicted Laurie Ann Lindgren's sworn deposition in *Rogalski v. The Pennsylvania State University et al.* by alleging she was annoyed or seriously alarmed
109. Trying Christopher A. Rogalski without a jury violated his Constitutional right to trial by jury due to both the private subject matter of the allegations and actions alleged, and the actual dollar amount in controversy.
110. Trying Christopher A. Rogalski without a jury and in front of corrupt or prejudiced Delaware County judges violated the United States Department of Education's rights to

collect on the student loan to Christopher A. Rogalski it guaranteed.

111. In the record of the March 15, 1991 hearing, Jane Doe informally represented or implied to the court that Laurie Ann Lindgren's restitution request was in fact made on behalf of the Commonwealth of Pennsylvania. The fact the Laurie Lindgren requested restitution should not have been considered absent a formal request from the Delaware County District Attorney for restitution on behalf of the Commonwealth of Pennsylvania.

112. If the Delaware County District Attorney in fact made a request for restitution on behalf of the Commonwealth of Pennsylvania from Christopher A. Rogalski, the request was made without an administrative investigation that Pennsylvania law supported such a restitution claim for Laurie Ann Lindgren's psychiatric or psychological fees, or that any such psychiatric or psychological fees were in fact incurred.

113. In the record of the March 15, 1991 hearing, the Commonwealth proffered no evidence of any damages caused to any person as a result of any alleged conduct of, or correspondence from, Christopher A. Rogalski.

114. In the record of the March 15, 1991 hearing lacks any stipulation from Christopher A. Rogalski that he caused any damages of any kind to any person.

115. Despite the fact that no evidence was proffered in the record by the Commonwealth of Pennsylvania in support of any restitution claim, nor was any stipulation made regarding any restitution claim, Judge Semeraro never-the-less ordered that Christopher A. Rogalski pay Laurie Ann Lindgren $2,668 in restitution.

116. Alternatively, the basis for Judge Semeraro's restitution order were statements made *ex parte* either by a representative of the Delaware County's District Attorney's office or by F. Harry Spiess, the Lindgren family attorney, or by some other person representing the Lindgren family.

117. Alternatively, the basis for Judge Semeraro's restitution order were statements made by an attorney representing Laurie Anne Lindgren, or the Lindgren family, who was not rep-

resenting the Commonwealth of Pennsylvania at the time the statements pertaining to restitution were made to Judge Semeraro.

118. Under Pennsylvania law the pendant power of a criminal court to issue "restitution" is an administrative power delegated by the Pennsylvania legislature. Since restitution is a creature of the legislature, the Pennsylvania Supreme Court has ruled that without express legislative direction, a criminal court is powerless to direct a criminal defendant to make restitution as part of a sentence. (See *Com. v. Harner, 617* A.2d 702)

119. At no point in time did Christopher A. Rogalski waive the right to contest the validity of any punishment or any so called "restitution" requested by Jane Doe or the corrupt Delaware County District Attorney's Office at the March 15, 1991 hearing.

120. Judge Semeraro gave Christopher A. Rogalski no opportunity to contest his restitution diktat either with regard to the granting of restitution, the amount thereof, or the ability to pay the restitution.

121. Judge Semeraro failed to set a timetable for repayment of the fictitiously alleged restitution as required by the Pennsylvania legislature under Pennsylvania law.

122. Judge Semeraro refused Christopher A. Rogalski the right of *allocution* prior to passing sentence as required under Pennsylvania law. Under Pennsylvania law, the failure, or in this case the refusal, of a sentencing judge to grant a criminal defendant *allocution* prior to passing sentence renders the entire sentence illegal, null and void. (See *Commonwealth v. Thomas* 553 A.2d 918 (1989))

123. Judge Semeraro failed to inform Christopher A. Rogalski of his post sentencing rights as required under Pennsylvania law, rendering the entire sentence illegal, and instead stated his unwillingness to permit such objections to be filed, stating, "Since this is a summary offense there is no post verdict rights. [sic.]" (See *Commonwealth v. Bonarrigo 448* A.2d 411(1988) speeding conviction).

124. The maximum period of probation which Judge Semeraro could have lawfully sentenced Christopher A. Rogalski on March 15, 1991 was 90 days probation.
125. On March 15, 1991, all relevant costs from the criminal proceedings were withheld from the return of Christopher A. Rogalski 's bail.
126. On April 11, 1991, Christopher A. Rogalski paid $150 to Delaware County for a "psychological exam" setup and scheduled by David Magee at the Delaware County Courthouse, after Magee harassed and threatened Christopher A. Rogalski with probation revocation.
127. In the 90 days Christopher A. Rogalski was on probation he violated no criminal statute.
128. In the 90 days Christopher A. Rogalski was on probation he violated no court order.
129. According to Judge Semeraro's sentence, the Delaware County Court of Common Pleas lost jurisdiction of the subject matter 90 days after pronouncing sentence on March 15, 1991.
130. Under the statutes of Pennsylvania, the Delaware County Court of Common Pleas lost jurisdiction of the subject matter 90 days after pronouncing sentence on March 15, 1991.
131. Under the right to a trial by jury granted by the Constitution of Pennsylvania, the Delaware County Court of Common Pleas lost jurisdiction of the subject matter 90 days after pronouncing sentence on March 15, 1991.
132. Under right to a trial by jury granted by the Constitution of the United States, the Delaware County Court of Common Pleas lost jurisdiction of the subject matter 90 days after pronouncing sentence on March 15, 1991.

E. DOUBLE JEOPARDY

133. In her March 15, 1991 statement of alleged facts regarding the remaining harassment charge, Jane Doe failed to allege that Christopher A. Rogalski had any communication of any form with Laurie Ann Lindgren following the commencement of the criminal action on December 12, 1989.
134. On August 17, 1992, Assistant Delaware County District Attorney, Heather Mattes, opened a second criminal prosecu-

tion of Christopher A. Rogalski for the same conduct previously prosecuted on March 15, 1991 requesting a warrant be issued for his arrest.

135. The only reason stated on the record by Heather Mattes for the issuance of the warrant is, "the Defendant not having presented himself either to Adult Probation and Parole or to this Court in order to face the Gagnon II hearing. The Commonwealth would be requesting that a bench warrant be issued for him."

136. No Gagnon I hearing was ever held, nor does any evidence of a Gagnon I hearing exist in the record, such that any Gagnon II hearing could legally occur.

137. The obvious presence of Mattes from the corrupt Delaware County District Attorney's office makes clear that the August 17, 1992 hearing was an adversarial proceeding.

138. Neither Heather Mattes, nor any other member of the corrupt Delaware County District Attorney's office notified Christopher A. Rogalski of the August 17, 1992 hearing as required by then existing Pennsylvania Rules of Criminal Procedure and due process of law.

139. Neither Heather Mattes, nor any other member of the corrupt Delaware County District Attorney's office notified Christopher A. Rogalski 's counsel of the August 17, 1992 hearing as required by then existing Pennsylvania Rules of Criminal Procedure and due process of law.

140. No sworn statement exists in the record of the August 17, 1992 hearing supporting the factual contentions set forth by Mattes, i.e. that Christopher A. Rogalski was notified of a hearing and he failed to appear at hearing where his attendance was mandatory.

141. The lack of a sworn statement supporting the factual allegations in the request for a warrant violates Christopher A. Rogalski 's Fourth Amendment to the United States Constitution protection against unreasonable seizures.

142. The lack of a sworn statement supporting the factual allegations in the request for a warrant violates Christopher A. Rogalski 's Fourteenth Amendment rights to due process of law.

143. The August 17, 1992 hearing, being held one year and five months after sentencing for a summary criminal offense for which the maximum permissible jurisdiction was 90 days, constitutes double jeopardy in violation of Christopher A. Rogalski 's Fifth Amendment Rights guaranteed by the United States Constitution.
144. It is believed and averred that the purpose of the August 17, 1992 hearing was to coerce and extort payment of the illegal sentence of "restitution" to Laurie Ann Lindgren.
145. Under Pennsylvania law the illegality of a sentence may be raised at any time.

F. ILLEGAL USE OF EX POST FACTO LAWS

146. In order to coerce payment of the illegal restitution sentence, the corrupt Delaware County District Attorney's office appears to invoke 42 PA Purdon's § 9728, an *ex post facto law* passed into by the Pennsylvania Legislature December 17, 1990, over a year after Christopher A. Rogalski was arrested for the alleged offense.
147. The application of 42 PA Purdon's § 9728 to Christopher A. Rogalski, as interpreted by the corrupt Delaware County District Attorney's office, is an *ex post facto law* which increases the non-jury jurisdiction of a court from 90 days to infinity in violation of the Constitutional right to trial by jury and acts as a forfeiture of the right to trial by jury.
148. Subjecting any person to infinite jurisdiction of a judge sitting without a jury in a criminal proceeding is a punishment, and a cruel and unusual punishment at that.

G. CONSPIRACY TO OBSTRUCT JUSTICE

149. On Tuesday, May 5, 1987 Christopher A. Rogalski was duly enrolled and matriculated as a student at the Pennsylvania State University, Main Campus in University Park, Pennsylvania, as a senior scheduled to graduate following completion of his final exams.
150. On evening of Tuesday, May 5, 1987, Laurie Ann Lindgren trespassed into the private quarters of Christopher A. Rogalski's dormitory at the Pennsylvania State University

along with a male companion for the purpose of creating a disturbance.

151. On Wednesday, May 6, 1987, Laurie Ann Lindgren proceeded to meet with the Pennsylvania State University's private police department, who concluded that Laurie Ann Lindgren was a "victim" of "harassment" because she couldn't stay out of a men's dormitory.

152. Due to the inability of the Pennsylvania State University to inform a female student that trespassing into the private quarters of a men's dormitory would not be tolerated, the lawsuit *Rogalski v. the Pennsylvania State University, et al,* resulted.

153. On May 10, 1989, U.S. District Court Judge Malcolm Muir issued an opinion granting defendants *Penn State, et al's* motion for summary government based upon a lack of federal jurisdiction.

154. Judge Muir's May 10, 1989 opinion contained *ipse dixit* regarding Christopher A. Rogalski's relationship with Laurie Ann Lindgren which appears nowhere in the record, and was of right triable to a jury, i.e., that Christopher A. Rogalski had "amorous aspirations toward Laurie Lindgren" and was "hoping to entice Lindgren to sleep with him."

155. Judge Muir's May 10, 1989 opinion failed to address a single comment in Laurie Ann Lindgren 's deposition of February 27, 1989, in *Rogalski v. The Pennsylvania State University, et al.,* which was on file with that court, where she admitted to trespassing in the private quarters of a men's dormitory and complaining about a poster that she admitted to "chuckling" about it.

156. Judge Muir's May 10, 1989 opinion failed to address the uncontradicted affidavits of Christopher A. Rogalski regarding the fact that Laurie Ann Lindgren had made long distance telephone calls repeatedly to Christopher A. Rogalski and engaged in other bizarre pubic behavior, including following him about in public, after the May 1987 incident, all of which was completely inconsistent with any claim of "harassment " or unwelcome contact on her part.

157. In an attempt to obstruct appellate review of his illegal and irrational "harassment" witch-hunt, Judge Muir secretly ordered the clerk of the court not to enter the judgment in favor of the defendants in order to create a procedural mess for the U.S. Court of Appeals for the Third Circuit to address when considering the appeal.

158. On July 13, 1989 Christopher A. Rogalski filed an appeal of Judge Muir's May 10, 1989 opinion and order along with the subsequent denial of a motion for reconsideration thereof of by Judge Muir on June 13, 1989, despite the fact that Judge Muir had refused to order the clerk to enter the judgment as required by the United States Supreme Court's duly promulgated Federal Rules of Civil Procedure, Rule 58.

159. On October 18, 1989, the U.S. Court of Appeals for the Third Circuit refused to hear the appeal and dismissed it as prematurely filed in spite of the fact that the United States Supreme Court in *Bankers Trust Co. v. Mallis*, 435 U.S. 381 (1978) had ruled that appellate review jurisdiction in this circumstance was not only lawfully granted but also a preferred exercise of judicial economy, "nothing but delay would flow...Wheels would spin for no practical purpose." *Mallis, supra* 435 U.S. 381 at 386.

160. On November 21, 1989, Judge Muir, in a willful attempt to further prejudice Christopher A. Rogalski's right to appeal his May 10, 1989 opinion and order and in violation of Judge Muir's own "Practice Order" in the case, entered an opinion, order and authorized the clerk to enter judgment granting Penn State, et al.'s motion for attorney's fees under 42 U.S.C § 1988.

161. Judge Muir's November 21, 1989 opinion, order and the clerk's entry of judgment granting attorney's fees were made prior to the entry of judgment in the predicate case and was therefore unlawful as the court lacked a grant of subject matter jurisdiction from the United States Congress to even hear the motion, let alone enter a judgment for attorney's fees under 42 U.S.C § 1988. (See *Coen v. Harrison County School Bd.*, 638 F.2d 24 (5th Cir. 1981), "The issue of who prevailed is a realistic judgment, not a technical one.")

162. On December 5, 1989, Christopher A. Rogalski filed a "Motion for Reconsideration" regarding Judge Muir's November 21, 1989 entry of judgment granting attorney's fees to *Penn State, et al.*, in the United States District Court for the Middle District of Pennsylvania. The "Motion for Reconsideration" filed by Christopher A. Rogalski made mention of the fact that no judgment had been entered from Judge Muir's May 10, 1989 "Opinion and Order" granting *Penn State, et al.,'s* motion for summary judgment and, therefore, the court lacked subject matter jurisdiction to hear or decide the claim of attorney's fees under 42 U.S.C § 1988.

163. After learning of the fact the Christopher A. Rogalski filed a "Motion for Reconsideration" on December 5, 1989, Laurie Lindgren, Roy Lindgren and/or Patricia Lindgren contacted F. Harry Spiess, Jr. and requested him to enlist his political connections in the Delaware County District Attorney's Office and the Radnor Township
Police Dept. and with District Justice Beverley Foster, and other Delaware County Judges, to arrest, harass, molest and maliciously prosecute Christopher A. Rogalski such that he could not effectively appeal Judge Muir's May 10, 1989 "Opinion and Order", or even afford counsel to do so, and to attempt to prevent Christopher A. Rogalski from filing papers in support of the appeal or testifying in a Federal court regarding the issues appealed.

164. Beginning on or about December 11, 1989, F. Harry Spiess, Jr. used his political connections with the Delaware County Republican political machine to form an enterprise which conspired to obstruct justice by falsely arresting, harassing, molesting and maliciously prosecuting Christopher A. Rogalski in order to obstruct his right to appeal Judge Muir's May 10, 1989 "Opinion and Order" and subsequent entry of judgment on January 31, 1990, and conspired to use Laurie Ann Lindgren's fraudulent "restitution" claim to extort several thousand dollars from Christopher A. Rogalski

165. The Defendants conspired to molest Christopher A. Rogalski in retaliation for his testimony in *Rogalski v. The Pennsylvania State University, et al* regarding Laurie Ann

Lindgren's inability to keep out of the private quarters of his dormitory, which the Lindgren family found embarrassing, and to prevent further testimony in related matters at trial after Christopher A. Rogalski successfully won his appeal.
166. The Defendants conspired to molest Christopher A. Rogalski in repayment for political contributions made by Roy K. Lindgren, Patricia Lindgren, Laurie Ann Lindgren, and F. Harry Spiess, Jr., to the Delaware County Republican Party political machine, and Delaware County judges, magistrates, William H. Ryan, or other local Delaware County officials.
167. The defendants participated in the foregoing acts for the purpose of carrying out the conspiracy, agreed to commit the predicate acts of the conspiracy, and knew that the acts were part of a pattern of racketeering and extortion.
168. On December 19, 1989, Christopher A. Rogalski filed a brief in support of the December 5, 1989 "Motion for Reconsideration" regarding Judge Muir's November 21, 1989 entry of judgment granting attorney's fees to *Penn State, et al.*, in the United States District Court for the Middle District of Pennsylvania.
169. On December 19, 1989, Christopher A. Rogalski filed a "Praecipe for entry of Judgment" in the United States District Court for the Middle District of Pennsylvania to compel an entry of judgment of Judge Muir's May 10, 1989 "Opinion and Order" granting *Penn State, et al.*, their motion for summary judgment such that it could be appealed to the United States Court of Appeals for Third Circuit.
170. On January 31, 1990, the clerk of the court for the United States District Court for the Middle District of Pennsylvania, finally entered the judgment for Judge Muir's May 10, 1989 "Opinion and Order", many months late.
171. On February 23, 1990, Christopher A. Rogalski filed a "Notice of Appeal" in the United States District Court for the Middle District of Pennsylvania appealing both the judgment entered by the clerk of the court on January 31, 1990 as well as Judge Muir's January 31, 1990 order denying reconsideration of the November 21, 1989 opinion, order, and entry of judgment granting attorney's fees to *Penn State, et al.*, in the

United States District Court for the Middle District of Pennsylvania.

172. On August 20, 1990, the clerk of the court for the U. S. Court of Appeals for the Third Circuit submitted all briefs for the two appealed judgments to a panel of the U. S. Court of Appeals for the Third Circuit for adjudication.

173. Despite the fact that two separate judgments were appealed from, on December 26, 1990 a Judgment Order was entered in the U. S. Court of Appeals for the Third Circuit which affirmed the order denying reconsideration of the November 21, 1989 opinion, order, and entry of judgment granting attorney's fees to *Penn State, et al.*, in the United States District Court for the Middle District of Pennsylvania, but failed to address the fact that the judgment entered by the clerk of the court on January 31, 1990 from the May 20, 1989 "Opinion and Order" granting *Penn State, et al.,'s* motion for summary judgment had also been appealed.

174. Since U. S. Court of Appeals for the Third Circuit lacked a grant of subject matter jurisdiction from the United States Congress to affirm the November 21, 1989 opinion, order, and entry of judgment granting attorney's fees to *Penn State, et al.*, the judgment entered by the clerk of the court on January 31, 1990 from the May 20, 1989 "Opinion and Order" granting *Penn State, et al.,'s motion* for summary judgment remains unadjudicated, on appeal before U. S. Court of Appeals for the Third Circuit to this day.

175. Throughout the pendency of the appeal to the U. S. Court of Appeals for the Third Circuit, the defendants conspired to arrest, harass, molest and maliciously prosecute Christopher A. Rogalski such that he could not effectively appeal Judge Muir's May 10, 1989 "Opinion and Order". The existence of the aforementioned "bench warrant" for Christopher A. Rogalski's arrest has caused a delay in a request for review in the U.S. Supreme Court of the Third Circuit's refusal to address the pending appeal.

176. Christopher A. Rogalski has a well grounded concern for continued retaliation from the Defendants which would obstruct Christopher A. Rogalski's ability to effectively proceed

before the U.S. Supreme Court . Such continued retaliation, harassment and obstruction will only prejudice the United States Department of Education's rights to collect on Christopher A. Rogalski's defaulted student loans and serves no legitimate purpose.
177. The defendants aforesaid actions constitute mail fraud, wire fraud, obstruction of justice, witness intimidation, witness retaliation, witness tampering, victim tampering, harassment, violation of the Racketeer Influenced And Corrupt Organizations Racketeering Act and conspiracy to commit the same acts.
178. Under the "supremacy clause" of the United States Constitution, Article VI, paragraph 2, no defendant may assert an immunity claim against the United States Department of Education.

WHEREFORE, plaintiff, The United States Department of Education demands judgment against the defendants, both jointly and severally, in an amount in excess of $75,000 in compensatory, punitive and exemplary damages, prior to accessing treble damages, plus interest and costs

IV. COUNT 2

The United States Department of Education ex rel. Christopher A. Rogalski vs. Defendants

179. Plaintiff, the United States Department of Education, hereby incorporates paragraphs 1 through 178 as though each and every averment therein was set forth herein fully.
180. As a result of the aforementioned acts of the defendants, relator, Christopher A. Rogalski was unable to complete his legal education, find gainful employment, or repay his student loans to the United States Department of Education
181. The defendants' aforementioned conduct constitutes tortuous interference with a government contract.
182. Under the "supremacy clause" of the United States Constitution, Article VI, paragraph 2, no defendant may assert an

immunity claim against the United States Department of Education.

V. COUNT 3
Christopher A. Rogalski vs. Defendants

183. Plaintiff, Christopher A. Rogalski, hereby incorporates paragraphs 1 through 182 as though each and every averment therein was set forth herein fully.
184. Defendants have caused the violation of Plaintiff, Christopher A. Rogalski's Constitutional rights, and are liable under 42 U.S.C. §1983, 42 U.S.C. §1985, 42 U.S.C. §1988, the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution.

WHEREFORE, plaintiff, Christopher A. Rogalski demands judgment against the defendants, both jointly and severally, in an amount in excess of one million ($1,000,000) in compensatory, punitive and exemplary damages, plus interest, costs and attorney's fees.

VI. COUNT 4
Christopher A. Rogalski vs. Defendants

185. Plaintiff, Christopher A. Rogalski, hereby incorporates paragraphs 1 through 184 as though each and every averment therein was set forth herein fully.
186. Plaintiff, Christopher A. Rogalski, had a federally granted statutory right to repay his government subsidized guaranteed student loans without unlawful harassment, obstruction, and interference under United States Codes title 20, Chapter 28 "Higher Education Resources And Student Assistance" and under the "supremacy clause" of the United States Constitution, Article VI, paragraph 2
187. Plaintiff, Christopher A. Rogalski, had a federally granted statutory right to receive an education, which was subsidized by government guaranteed student loans, without unlawful harassment, obstruction, and interference under

United States Codes title 20, Chapter 48 "Department of Education" (See 20 U.S.C. § 3402) and under the "supremacy clause" of the United States Constitution, Article VI, paragraph 2.

188. Plaintiff, Christopher A. Rogalski, had a federally granted statutory right to seek appellate review of Judge Muir's May 10, 1989 "Opinion and Order" and subsequent entry of judgment on January 31,1990, and any judgment by either the U.S. District Court or the U.S. Court of Appeals for the Third Circuit by appeal or prerogative writ, without unlawful harassment, obstruction, and interference under United States Codes title 28 U.S.C. § 1254, 28 U.S.C. § 1291, 28 U.S.C. § 1651, 28 U.S.C. § 2101, and under the "supremacy clause" of the United States Constitution, Article VI, paragraph 2.

189. Defendants have caused the violation of Plaintiff, Christopher A. Rogalski's federally granted statutory rights, and are liable for tortuous interference of a United States government contract, tortuous interference of a federal appeal, and interference with the right to a higher education.

WHEREFORE, plaintiff, Christopher A. Rogalski demands judgment against the defendants, both jointly and severally, in an amount in excess of one million ($1,000,000) in compensatory, punitive and exemplary damages, plus interest and costs.

VII. COUNT 5
Christopher A. Rogalski vs. Defendants

190. Plaintiff, Christopher A. Rogalski, hereby incorporates paragraphs 1 through 189 as though each and every averment therein was set forth herein fully.

191. Plaintiff, Christopher A. Rogalski, hereby invokes the pendant jurisdiction of this court to hear and decide state law claims.

192. The aforesaid actions of the Defendants constitute false arrest, malicious prosecution, official oppression, extortion,

theft by extortion, assault, invasion of privacy, abuse of process, conspiracy and gender discrimination under applicable Pennsylvania law.

WHEREFORE, plaintiff, Christopher A. Rogalski demands judgment against the defendants, both jointly and severally, in an amount in excess of one million ($1,000,000) in compensatory, punitive and exemplary damages, plus interest and costs.

VIII. COUNT 6
Christopher A. Rogalski vs. Defendants

193. Plaintiff, Christopher A. Rogalski, hereby incorporates paragraphs 1 through 192. as though each and every averment therein was set forth herein fully.

WHEREFORE, plaintiff, Christopher A. Rogalski demands that the Court adjudge;
194. That Delaware County District Attorney's Office has engaged in bad faith criminal prosecution for the purpose of obstructing a federal appeal and attempting to extort money for non-existent, illegal restitution for Laurie Ann Lindgren's fictitious psychiatric or psychological expenses.
195. Under Pennsylvania statutory law, 18 PA Purdon's §5504 "Harassment by Communication" the Pennsylvania Legislature permits jurisdiction in both the county of origin as well as the county of receipt of prohibited communications. Conversely 18 PA Purdon's §2709 "Harassment" (as it then existed in 1990) pertained to public acts. The Pennsylvania Legislature did not grant subject matter jurisdiction in the county of receipt of a letter or telephone call. Nor did it grant subject matter jurisdiction under 18 PA Purdon's §2709 "Harassment" to try an act committed in another county.
196. No subject matter jurisdiction over alleged actions, i.e. mailing letters or making phone calls, which occurred in another county, was acquired by Delaware County for purposes of charging Christopher A. Rogalski with 18 PA Purdon's

§2709 Harassment, the address of the alleged "victim" notwithstanding. Trying an individual in a county different from where the alleged crime occurred violates the Sixth Amendment and Fourteenth Amendment o the United States Constitution.

197. 18 PA Purdon's §2709 "Harassment" does not apply to communications from letter or telephone; it only applies to public conduct, not private communications.

198. 18 PA Purdon's §2709 "Harassment" provides no ascertainable standards of conduct which is unlawful. 18 PA Purdon's §2709 "Harassment" is unconstitutional because its vagueness and over breadth deprives people of their rights secured by the First and Fourteenth Amendments to the United States Constitution.

199. Trying Christopher A. Rogalski without a jury violated his Constitutional right to trial by jury due to both the private subject matter of the allegations and actions alleged, and the actual dollar amount in controversy.

200. Trying Christopher A. Rogalski without a jury and in front of corrupt or prejudiced Delaware County judges violated prejudiced the United States Department of Education's rights to collect on the student loan to Christopher A. Rogalski it guaranteed.

201. Judge Semeraro violated Due Process of Law by refusing Christopher A. Rogalski the right of *allocution* prior to passing sentence as required under Pennsylvania law. Under Pennsylvania law, the failure, or in this case the refusal, of a sentencing judge to grant a criminal defendant *allocution* prior to passing sentence renders the entire sentence illegal, null and void. (See *Commonwealth v. Thomas* 553 A.2d 918 (1989))

202. Judge Semeraro violated Due Process of Law by ordering restitution with requiring any proof that the "victim" suffered a physical injury as required by the Pennsylvania legislature or that the "victim" in fact had incurred any expenses of any kind whatsoever for emotional distress, psychiatric or psychological fees.

203. Judge Semeraro violated Due Process of Law by refusing to inform Christopher A. Rogalski of his post sentencing

rights as required under Pennsylvania law, rendering the entire sentence illegal, and instead stated his unwillingness to permit such objections to be filed, stating, "Since this is a summary offense there is no post verdict rights. [sic.]" (See *Commonwealth v. Bonarrigo 448* A.2d 411(1988) speeding conviction).

204. The maximum period of probation which Judge Semeraro could have lawfully sentenced Christopher A. Rogalski on March 15, 1991 was 90 days probation.

205. On March 15, 1991, all relevant costs from the criminal proceedings were withheld from the return of Christopher A. Rogalski 's bail.

206. The lack of a sworn statement supporting the factual allegations in the request for a warrant, issued August 17, 1992, violates Christopher A. Rogalski 's Fourth Amendment to the United States Constitution protection against unreasonable seizures.

207. The lack of a sworn statement supporting the factual allegations in the request for a warrant, issued August 17, 1992, violates Christopher A. Rogalski 's Fourteenth Amendment rights to due process of law.

208. The August 17, 1992 hearing, being held one year and five months after sentencing for a summary criminal offense for which the maximum permissible jurisdiction was 90 days, constitutes double jeopardy in violation of Christopher A. Rogalski 's Fifth Amendment Rights guaranteed by the United States Constitution. The application of 42 PA Purdon's § 9728 to Christopher A. Rogalski, as interpreted by the corrupt Delaware County District Attorney's office, is an *ex post facto law* which increases the non-jury jurisdiction of a court from 90 days to infinity in violation of the Constitutional right to trial by jury and acts as a forfeiture of the right to trial by jury.

209. Subjecting any person to infinite jurisdiction of a judge sitting without a jury in a criminal proceeding is a punishment, and a cruel and unusual punishment at that.

210. By prejudicing Christopher A. Rogalski's right to secure and obtain employment, Christopher A. Rogalski's federally

guaranteed right to higher education and his right to repay federally guaranteed loans has been denied, resulting in a loss to the United States Department of Education.

IX. COUNT 7
Christopher A. Rogalski vs. Defendants

211. Plaintiff, Christopher A. Rogalski, hereby incorporates paragraphs 1 through 209 as though each and every averment therein was set forth herein fully.
212. The damage and injury done to the Plaintiffs by being deprived of the foregoing rights is ongoing, continuous, irreparable, and there is no adequate remedy at law.

WHEREFORE, plaintiff, Christopher A. Rogalski, shall ever pray that this Court

1) Issue a permanent injunction enjoining the Defendants from further bad faith prosecutions or other administrative acts seeking moneys from plaintiff, Christopher A. Rogalski, regarding the facts contained in this complaint in the Delaware County Court of Common Pleas.

2) Issue a permanent injunction expunging plaintiff, Christopher A. Rogalski's, arrest and prosecution records, including any the record of any outstanding bench warrants from local and state police records, as well as the Delaware County Court of Common Pleas.

/s/Christopher A. Rogalski

Christopher A. Rogalski
503 Bradford Avenue
Warrington, Pennsylvania
18976
215-285-3034

Pro Se

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

ReceiveD SEP – 6 1990
U.S.C.A. 3RD CIR.
[STAMPED]

Christopher A. Rogalski, Appellant	:	Docket No. _____
V.	:	*[UNDOCKETED]*
	:	D.C. Civ. No. 90-5632
William H. Ryan, et al, Appellees	:	

EMERGENCY INTERLOCUTORY APPEAL

I STATEMENT OF JURISDICTION

This court has jurisdiction of this case pursuant to 28 U.S.C. § 1292 (a) (1). Although this appeal is from the order of the United States District Court for the Eastern District of Pennsylvania denying a temporary restraining order, the order is appealable under Cohen v. Benenficial Industrial Loan Corp., 337 U.S. 541, 69 S. Ct. 1221 (1949), and its progeny.

The leading case in this area is United States v. Wood, 295 F. 2d 772 (5th Cir. 1961), cert. d2nied 369 U.S. 850, 82 S. Ct. 933 (1962). In Wood. the government brought an action for to prevent state court prosecution of one Hardy. The government contended that the state court prosecution was brought in bad faith, and regardless of the outcome, would effectively intimidate Blacks from exercising voting rights. The government brought suit two days before the scheduled state court trial seeking, a restrain-ing order. After the District Court denied the request, an appeal was made to the Fifth Circuit. The appeal was sustained. The court reasoned that claim asserted was the right to prevent the prosecution, and accordingly, the denial of the restraining order was a denial of that right under circumstances which would preclude appellate review otherwise. Except for the fact that in this case

[END PAGE 1]

the district court had eight days to rule open the motion for arestraining order rather than two, this case presents the identical right and issue to this Court. Additional authority is found in Woods v. Wright, 334 F.2d 369 (5th Cir. 1964); Dilworth v. Riner, 343 F. 2d 226 (5th Cir. 1965); Wirtz v. Powell Knitting Mills Co., 360 F. 2d 730 (2nd. Cir. 1966); Kimball v. Commandant Twelfth Naval District, 423 F. 2d 33 (9th Cir. 1970). It is believed that this is also the rule of law of this Circuit. Due to the time factor involved, no such case has appeared to the undersigned. However, no case to the contrary appears to exist in any circuit.

II FACTS

On August 29, 1990 Mr. Rogalski brought this action for equitable relief against William H. Ryan, Jr., District Attorney for Delaware County, Pennsylvania, the Radnor Township Police Depart-ment, The Delaware County Court of Common Pleas along with presid-ing Judge Prescott, and District Justice Court No. 32-1-20, of Del-aware County along with presiding magistrate Beverly Foster. Mr. Rogalski sought to enjoin. a bad faith criminal prosecution now scheduled for trial on SEPTEMBER 7, 1990!

On September 4, 1990, the District Court for the Eastern District of Pennsylvania denied the motion for a temorary restrainin-ing order which for all intents and purposes is a denial of the merits of this action. This appeal now follows.

By way of comment, personal service has been confirmed upon all respondents/appellees except the Radnor Township Police Department.

Of paramount importance, this action relates to Docket No.90-5175 (appeal) and Docket No. 90-5752 (Petition for Writ of

[*END PAGE 2*]

Mandamus) presently pending before this court. As is more fully stated in these proceedings, on May 10, 1989 U.S. District Judge Malcolm Muir authored an opinion alleging that around Valentine's Day 1987 Mr. Rogalski sent one Miss Laurie *Ann Lindgren* a stuffed penguin of the popular "Opus Crocus" cartoon character of the "Bloom County" and "Outland" newspaper cartoon series by Berk Breathed, along with a letter, according to Judge Muir, with "amorous aspirations" and "hoping to entice [Miss] Lindgren to sleep with him." These statements are in direct contradiction of Mr.Rogalski's testimony ostensibly relied upon by Judge Muir; Mr. Rogalski testified that he "never gave a damn about hoping to 'entice' Miss Lindaren to sleep with him." In addition, on February 27, 1989, Miss Lindgren [stated] that she did not find the "Opus" or accom-panying letter offensive and objected to stating why she believed the "Opus" was sent to her as speculative. Appearantly, Judge Muir's libelous statements in his opinion have prejudiced the motion for a temporary restraining order in the District Court.

The subject of the appeal before this Court is that on May 5, 1987, Mr. Rogalski placed several innocuous posters of himself in public areas of Penn State's campus with his picture along with the caption "1987 CHI OMEGA MAN OF THE YEAR FOR, GUTS ABOVE AND BEYOND THE CALL OF DUTY". According to Miss Lindgren's testimony on February 27, 1989, she found the poster humorous and began "chuckling about it". On this same date, Miss Lindgren testified, IN HER OWN WORDS, that she felt Compelled to complain to the police about this poster, "BECAUSE CHRIS WOULD NOT STOP LEAVING ME ALONE AND ANYTHING I WOULD DO, HE WOULD IGNORE."

At this late date, the appellees assert that Miss Lindgren

[*END PAGE 3*]

was "harassed" by this clear exercise of the First Amendment.

On December 5, 1989, Mr. Rogalski filed a Motion for Reconsideration with the United States District Court for the Middle District of Pennsylvania. The motion made clear Mr. Rogalski's ability to appeal to this tribunal the May 10, 1989 Opinion.

On December 12, 1989, one Officer Henry Jansen of the Radnor Police Department placed a long distance phone call to Mr. Rogalski at his then residence in Carlisle, Pennsylvania. Officer Jansen demanded that Mr. Rogalski trek more than 100 miles to Radnor Township for an "appointment" with him. After Mr. Rogalski refused this unreasonable demand, Officer Jansen became abusive, stating "Don't you dare talk to Laurie Lindgren. Don't you dare file that appeal.

Shortly thereafter, Mr. Rogalski was arrested based upon an affidavit by Officer Jansen. This affidavit contains a WORD FOR, WORD REITERATION OF JUDGE MUIR'S OUTRAGEOUS CONTENTION THAT MR. R0GALSKI TESTIFIED THAT AROUND VALENTINE'S DAY 1987 HE SENT A LETTER AND A STUFFED "OPUS", "HOPING TO ENTICE [MISS] LINDGREN TO SLEEP WITH HIM". These contentions allege that Miss Lindgren used this phrase in complaining to the Randnor Township Police in December of 1987, IN DIRECT CONTRADICTION OF HER TESTIMONY OF FEBRUARY 27, 1989. ACCORDINGLY, THESE CONTENTIONS MUST BE REGARDED AS PERJURED AND AN ATTEMPT TO OBSTRUCT JUSTICE AND OTHERWISE HARASS, INTIMIDATE, AND RETALIATE AGAINST MR. ROGALSKI FOR PURSUING AN APPEAL BEFORE THIS TRIBUNAL.

In addition, Officer Jansen alleges that Mr. Rogalski "harassed" Miss Lindgren by scheduling her deposition on February 27, 1989. Miss Lindgren was in fact represented by counsel before

[*END PAGE 4*]

and at her deposition, made no motion for a protective order with the court after being subpoenaed, and accordingly waived any objec-tion to the timing of her deposition. Mr. Rogalski set the date for Miss Lindgren's deposition after Miss Lindgren's attorney failed to respond to two requests to schedule a deposition date.

Officer Jansen further alleges that Miss Lindgren was "harassed" by a letter 'Mr. Rogalski sent to Miss Lindgren's attorney reminding him that Miss Lindgren had made long distance phone calls to him in April and May of 1988, phone calls which appeared upon Miss Lindgren's long distance phone records.

Officer Jansen alleges that notes and flowers sent to Miss Lindgren by Mr. Rogalski in response to Miss Lindgren's RE-PEATED phone calls to him constitutes "harassment".

At all times pertinent hereto, William H. Ryan, Jr. and. The Radnor Township Police and their agents have been aware that during the time period they wish to claim that Miss Lindgren has been "harassed" that she has been making long distance phone calls to Mr. Rogalski which will appear upon her long distance phone records, and accordingly, no reasonable, rational person could believe that Miss Lindgren was "harassed".

The First Amendment of the United 8tates Constitution grants Mr. Rogalski the right to respond to Miss Lindgren's phone calls and other conduct toward Rogalski.

Officer Jansen's affidavit also contends that a letter sent by Mr. Rogalski to Miss Lindgren stating that he wished to have an exclusive relationship with her involving some kind of serious commitment and that he had no interest in "casual sex" contains

[*END PAGE 5*]

"Sexual overtures".

III CONCLUSION

ALL CONTENTIONS THAT MR. ROGALSKI "HARASSED" MISS LINDGREN OR OTHERWISE VIOLATED SECTIONS 5503, 5504 and 2709 OF THE CRIMES CODE OF PENNSYLVANIA PERTAINING TO DISORDERLY CONDUCT, HARASSMENT OR HARASSMENT BY COMMUNICATION HAVE BEEN BROUGHT IN BAD FAITH TO HARASS MR. ROGALSXI, TO OBSTRUCT JUSTICE AND WITHOUT ANY POSSI-BILITY OF OBTAINING A VALID CONVICTION. MR. ROGALSKI HAS AN ABSOLUTE CONSTITUTIONAL RIGHT TO BE FREE FROM THIS BAD FAITH STATE CRIMINAL PROSECUTION. (SEE SHAW V. GARRISON, 467 F. 2d 113 (5th Cir. 1972) MR. ROGALSKI HAS SUFFERED, AND WILL CONTINUE TO SUFFER IMMEDIATE AND IRREPARABLE INJURY IF THIS BAD FAITH PROSECUTION IS PERMITTED TO CONTINUE AND HAS NO ADEQUATE REMEDY AT LAW.
WHEREFORE, MR. ROGALSKI RESPECTFULLY REQUESTS THAT THE DISTRICT COURT'S ORDER OF SEPTEMBER 4, 1990 DENYNG MR. ROGALSKI'S REQUEST FOR A TEMPORARY RESTRAINING ORDER BE REVERSED.

Recpectfully Submitted,

/S/ Christopher A. Rogalski
Christopher A. Rogalski

503 Bradford Avenue
Warrington, Pennsylvania
18976

PRO SE

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

CHRISTOPHER A. ROGALSKI, :
APPELLANT :
:
V. : DOCKET NO.
90-5175
:
THE PENNSYLVANIA STATE :
UNIVERSITY,et al, :
APPELLEES

RECEIVED
APR 27 1990
U.S.C.A 3rd. CIR.
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APPLICATION FOR REVIEW OF APPELLANT'S
MOTION TO BIFURCATE APPEAL
(MOTION FOR SUMMARY ACTION)

1. On April 18, 1990, the Appellant, Mr. Christopher A. Rogalski, filed a brief in support of his motion to bifurcate this appeal. Upon further review of Chapter 17 of this Circuit's operating procedures, the motion is more aptly entitled a motion for summary action.

2. Specifically, the motion requests a vacation of the district court's November 21, 1989 judgment. Alternatively, the motion requests dismissal of the judgment for a gross abuse of discretion, in direct contradiction of the district judge's "practice order".

3. On April 23, 1990, the clerk of the court denied the above mentioned motion. (See attached)
[*PREVIOUSLY REPRODUCED AT A-4. EDITOR.*]

4. The clerk's denial of this motion to promptly vacate the judgment is in violation of the United States Supreme Court's directive:

> Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. F.R.C.P. 12 (h) (3).

5. As the district court lacked jurisdiction of the subject matter, prompt dismissal of the action is mandatory, not discretionary. The Supreme Court did not order dismissal "when convenient"; the rule compels dismissal "whenever" subject matter appears lacking

6. In addition, it hardly could be considered appropriate, fair or just to burden Mr. Rogalski with the substantial expense necessary to preserve his objections to the November 21, 1989 judgment and preceding hearing where the district court's conduct in this matter is in direct contradiction of the "practice order" of the court, and as such, a gross abuse of discretion.

7. The contents of the brief of appellant is support of motion to bifurcate appeal are incorporated herein by reference as if set forth in full.

WHEREFORE, Mr. Rogalski moves this honourable Court to submit the aforementioned motion for summary action (motion to bifurcate appeal) to the motion panel of this court for disposition.

Respectfully submitted,

/s/ *Christopher A. Rogalski*

Christopher A. Rogalski

503 Bradford Avenue
Warrington, Pennsylvania
18976

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CHRISTOPHER A. ROGALSKI, Plaintiff,	:	CIVIL ACTION
V.	:	No. 88-1730
THE PENNSYLVANIA STATE UNIVERSITY, et al., Defendants	:	Judge M. Muir

FILED
HARRISBURG, PA.
FEB 23, 1990
DONALD R. BERRY,
CLERK
PER....SLJ.....
DEPUTY CLERK
[STAMPED UPPER, RIGHT HAND SIDE]

NOTICE OF APPEAL

NOW, KNOW ALL MEN BY THESE PRESENTS, that Christopher A. Rogalski, the above named Plaintiff, hereby appeals to the United States Court of Appeals for the Third Circuit from the judgment entered on January 31, 1990 as well as the Order of January 31, 1990 denying Mr. Rogalski's motion for reconsideration of the judgment entered on November 21, 1989.

Verily, I am,

/s/ *Christoper A. Rogalski*

Christoper A. Rogalski

503 Bradford Avenue
Warrington, Pennsylvania
18976

Pro Se

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PENALTY CHARGES	FEES & COSTS	TOTAL BALANCE
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CHRISTOPHER A ROGALSKI
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WARRINGTON PA 18976

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DATE: March 21, 2003

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You have failed to respond to our previous correspondence regarding the above referenced debt.

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This impending action may be avoided by remitting payment in full. If you cannot make the full payment you must contact this office at the number listed below:

NCO Financial Systems, Inc. 877-847-1486.

You may send written correspondence to:

NCO FINANCIAL SYSTEMS, INC.
PO BOX 41420
PHILADELPHIA, PA 19101-1420

THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE

NCO 404
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503 Bradford Avenue
Warrington, Pennsylvania
18976
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